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## TRACTION ENGINE TRAFFIC ON HIGHWAYS.

In the Queen's Bench Division on Friday, before Mr. Justice Field and Mr. Justice Bowen, the case of the Queen v. Messrs. Jesse Ellis and Co., traction engine proprietors, Maidstone, came on. It was a case on the Highway Traffic Act of 1878, as to what is "extraordinary traffic" within the meaning of that Act, justifying extra charge. The road in question was a cross road at Marden, known as the Broadforstal and Mackenden-road, leading through the fields from the main road near the station of the South Eastern Railway Company, and the defendants had caused a heavy traction locomotive to be driven along the road with loads of manure, the result of which was to cut into the road so deeply as to cause some of it to fall into the ditch. The justices had held this to be extraordinary traffic, and the defendants appealed.

The case was first heard before the Cranbrook bench of magistrates, who ordered Messrs. Ellis to pay £28 9s., being the amount expended in repairing the damage done to the road, and on the 1st July, 1881, an appeal against this decision at the West Kent Quarter Sessions was dismissed and the decision of the magistrates below confirmed. Cases were then granted as to the liability of Messrs. Ellis to be sued (it being contended that Mr. L. D. Wigan was the person to be proceeded against, as the traffic was carried on by his orders), and as to the ruling that the carriage of the manure constituted "extraordinary traffic" within the meaning of the Act. On this latter point it was argued at Maidstone that the carriage of manure by traction engines was a recognised proceeding at the present time in the county, and, not being "extraordinary traffic," it was the duty of the Maidstone Rural Sanitary Authority, within whose district the road is situated, to make it fit for such traffic.

On Friday Mr. G. L. Denman argued for the defendants, but Mr. Douglas Kingsford, who supported the order, was not called upon.

The Court held that the justices were right in deciding that the traffic in this case was "extraordinary"—that is, with reference to the particular road itself, which they thought the true test. So the order was upheld and the appeal dismissed.

*S. P. Gazette*  
*Feb 28<sup>th</sup> 1882 -*

THE TONBRIDGE AND SEVENOAKS HIGHWAY BOARDS, AND THE EXTRAORDINARY TRAFFIC QUESTION.

In the High Court of Justice, Queen's Bench Division, on Friday last, before Mr Justice Grove and Mr Justice Hawkins, was heard the appeal case of *Tonbridge District Highway Board v. The Sevenoaks District Highway Board*, which raised an important question with regard to extraordinary traffic.

Mr M. White, Q.C., and Mr Baldock Stone were for the appellants (instructed by Mr T. F. Simpson, Tunbridge Wells); and Mr H. Collins, Q.C., and Mr D. Kingsford for the respondents (instructed by Mr W. C. Cripps, Tunbridge Wells).

It will be remembered that, on the 28th December, upon the application of the Sevenoaks District Highway Board, a summons was issued by the County Magistrates, on the certificate of the Board Surveyor, calling upon the Tonbridge Board to appear before them, pursuant to the 23rd section of the 41st and 42nd Victoria, cap. 77, to answer to a claim made by the respondent Board for the sum of £93 incurred in respect of the repairs of a highway in their district, called Carter's Hill, from the 25th March, 1883, to the 12th December, 1883, by reason of damage caused by the conducting of excessive weights and extraordinary traffic over the same, and thereby causing the cost of repairs as compared with previous years to be excessive.

The case came on for hearing before the Justices on the 25th January last, when it was proved or admitted—that the respondent Board is the authority liable to repair the highway in question, and the appellant Board to repair those in the district adjoining that of the respondent Board; that the parish of Seal is one of the parishes comprised in the respondent's district in the same range of hills as the parish of Sevenoaks, Tonbridge and Brasted; that, in the parish of Seal, there is a road called Carter's-hill, about one mile six furlongs in length; that this road is not a main road but an agricultural road; that, previously to the commencement of the year 1882 it was seldom used except for agricultural purposes and that but trifling expenses were incurred by the respondent Board in maintaining it, but, on the 25th March, 1882, a quarry was opened on the top of Carter's-hill, for the purpose of supplying the public with hard stone, and, between that time and the 25th March, 1883, a large quantity of stone was dug and carried into the appellants' district and the surrounding country a considerable portion being hauled down Carter's-hill. In March 1882, the road was in good condition for ordinary traffic, but this new traffic for which it was unfitted so damaged it that the respondent Board had, in the year ending 25th March, 1883, to expend £88 17s. 6d. in repairing it, or against £14 14s. 3d. in previous years. Subsequently to the 25th March, about 5,000 yards of stone was procured by the appellant Board from the quarry at the top of Carter's-hill, and, between the 1st April and the 1st December, contractors were employed by the Tonbridge Board to cart the stones into their district and a quantity of 1,321 yards or thereabouts was carted down the hill into their district, the rest going through the parish of Seal, along some level hard roads, which was a longer route, but the respondent Board had not claimed anything for that. It was admitted by the Tonbridge Board that the stones were carted away in loads of about 4½ to six tons, drawn by three to five horses, and that the wheels of the waggon were four to 4½ inches in breadth and were such as were generally used



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Mr White, Q.C., in addressing the court on behalf of the appellant Board, argued that stone quarrying was part of the normal condition of the parish, and the natural industry of the district. The only reason of the commencement of the traffic being unlooked for was, because the quarry had not been discovered, also that the justices had not taken a proper basis for finding the expenses were excessive. The learned counsel, in support of his argument referred to several cases, notably that of *Wallington v. Hoskins*, 16 Queen's Bench Division.

The other side was not called upon.

Mr Justice Grove said in this case the magistrates had found expressly that the traffic in question over Carter's Hill was extraordinary within the meaning of the Act, and that the weights were excessive within the meaning of the said section, also that extraordinary expenses to the amount claimed had been incurred by reason of the damage caused by excessive weights. The parties had left the question for the opinion of the Court, as to whether here was evidence to justify the finding. He was of opinion that there was. It was not a question whether he should have to come to the same conclusion as they did, but he was inclined to think he should have. Now what was extraordinary? One would have thought the term a very simple one, but it appeared not to be so judging from the number of cases that had arisen out of it. Mr White had quoted no less than six, and it was singular enough three of them had been tried before him. He would only call attention to two in which he had expressed his opinion generally on the meaning of the section. First the *Monmouth Board v. The Monmouth Railway Company*, in which case the extraordinary traffic was caused by the cutting of trees at irregular seasons, when certain large woods were cut down out of the usual time. Then it was held that it was not extraordinary. In the case of *Wallington v. Hoskins*, which was that on what Mr White mainly relied, no doubt it was somewhat similar to the present case. It then appeared the owners of stone quarries in the district had the stone conveyed in heavy loads on the highways and made the cost of repairing them greater. The Magistrates found that the traffic was not extraordinary, and the Court confirmed the decision; but in that case there were not the exceptional circumstances which appeared in the one now before the Court, namely, that it was an agricultural road, and it was a new quarry situated at a new place, and the road was not meant for such traffic, and the increased weight upon it, together with the skidding of the drays, made it necessary to have an entirely new road made for the quarry, and therefore it was not parallel with the Wallington case. What was the most material point was that the magistrates, knowing the district in question, found the traffic was extraordinary, and he thought in the present case, looking at the surroundings of the district, it was so. He (the learned Judge) thought the building of a farmhouse or a cottage might not have been fairly called extraordinary traffic for the road, and would not be extraordinary; whereas the building of a college, some mansion or a palace might be extraordinary. The question must be to some extent one of fact, and he thought that there was evidence, and in his judgment ample evidence, for the magistrates to have reasonably come to the conclusion they did. Therefore he gave judgment for the respondents with costs.



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in making stone; that by reason of the hill being so steep,  
 it was necessary to chain the wheels of the loaded  
 waggons and supply brakes in the ordinary way, and  
 so the road was cut up and damaged very much. It was  
 proved that for many years past the appellant Board had  
 drawn portions of this stone from the range of hills on  
 which Seal is situated, but not through the parish of Seal  
 itself; that the carting of stone from the quarries  
 situated on the range of hills had for many years been a  
 recognised business and carried on in the same way. It  
 was contended by the Tonbridge Board that the parish  
 of Seal formed part of the highway district, and it was  
 immaterial that stone traffic had not been carried over  
 Carter's-hill before, also that such traffic was the  
 recognised and customary business of the district; there-  
 fore, it could not be held that the traffic was extra-  
 ordinary within the meaning of the Act—the weights  
 were not excessive, but only the usual ones in such traffic.  
 The magistrates were of opinion that the traffic was  
 extraordinary and excessive within the meaning of the  
 section, and certified for extraordinary expenses for the  
 amount claimed, namely, £93, but submitted a case for  
 the opinion of the Court as to whether there was evidence  
 to justify such a finding.

## THE HIGHWAY, LOCOMOTIVE, AND TURNPIKE CONTINUANCE

**TRACTION ENGINES.**—The Sheffield County  
 Court Judge yesterday gave his decision in an action  
 in which Mr. Maurice Booth, coal merchant, sought to  
 recover from Messrs. J. and J. Dyson, brick manufacturers,  
 the sum of £40 as damages for the loss of a horse which  
 was killed by a traction engine belonging to the defendants,  
 and through, it was alleged, their negligence. His Honour  
 held that it was not necessary to find negligence on the  
 part of the defendants' servant when the statute had so  
 carefully preserved the liability of persons who employed  
 a dangerous machine like a traction engine on the public  
 road—an engine which was undoubtedly a very great  
 nuisance and the cause of great danger to persons, espe-  
 cially to equestrians. The Act made it so clear that it  
 seemed to him to be beyond doubt, and the case cited by  
 Mr. Barker showed that even in a case where there was no  
 negligence whatever attributable to the servants of the  
 party using a locomotive on the public road, still they were  
 liable for the injury so caused, and the ground of fixing  
 that liability upon persons who used the locomotive arose  
 upon the 12th section, 28 and 29 Vic., cap. 83, which enacted  
 that "nothing in this Act contained shall authorize any  
 person to use a locomotive which may be so constructed or  
 used as to be a public nuisance at common law." Then  
 followed these words, "and nothing herein contained shall  
 affect the right of any person to recover damages in respect  
 of injury he may have sustained in consequence of the use  
 of a locomotive." Therefore what was put as the ground of  
 liability was not negligence; it was the use of a locomotive.  
 Nothing could be clearer than this. His Honour,  
 therefore, found a verdict for the plaintiff, and allowed  
 costs.

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THE  
**Highway Acts,**  
1862-1878,

THE  
LOCOMOTIVE ACTS,  
1861-1878,

AND THE GENERAL PROVISIONS OF THE  
TURNPIKE CONTINUANCE ACTS  
1863-1878.

WITH  
*INTRODUCTION, NOTES, &c.,*

BY  
ALEXANDER GLEN, M.A., LL.B., CANTAB.  
BARRISTER-AT-LAW.

**Fifth Edition**

WITH A PAPER ON THE CONSTRUCTION AND REPAIR OF ROADS

BY W. NETHERSOLE, M.I.C.E.

LONDON:  
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## PREFACE.

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THE three first editions of this work were edited by my father, Mr. WILLIAM CUNNINGHAM GLEN, Barrister-at-Law ; and in the fourth and present editions, I have availed myself of his annotations.

The passing of the Highways and Locomotives (Amendment) Act, 1878, has necessitated a considerable extension of the work. That Act so connects the Acts relating to the use of locomotives on Highways with those relating to Highway Boards, that I have thought it desirable to insert the former Acts as an additional part of the book.

The plan of the work remains as in the former editions. The Introduction gives first a summary of the Highway Acts, from the Act of 1862 to that of last session, and then a summary of the Locomotive Acts. Part I. contains the Highway Acts above-mentioned, omitting the portion of the Act of 1878 which amends the Locomotive Acts. Part II. contains the Locomotive Acts, including the portion of the Act of 1878 omitted from Part I. And Part III. contains the general provisions of the Turnpike Continuance Acts, 1863 to 1878, relating to the winding up of

turnpike trusts and to disturnpiked roads. The notes to the three parts consist of the reported decisions on the Acts, portions of the Highway Act, 1835, of the General Turnpike Acts, and of other statutes, cross references, and explanatory remarks.

The incorporated clauses of the Commissioners Clauses Act, 1847, and of the Common Law Procedure Act, 1854, are again appended. A new Appendix, which consists of a paper treating of the several methods of constructing roads and of the repair of roads, contributed by Mr. William Nethersole, M.I.C.E., will be of use both to surveyors and to others who are interested in the maintenance and improvement of the public roads.

The Index is re-written, and is now arranged in paragraphs in which the subjects are placed in alphabetical order under the principal leading words.

ALEXANDER GLEN.

*Middle Temple,*

*5th January, 1879.*



# TABLE OF CONTENTS.

## INTRODUCTION, PART I.

### THE HIGHWAY ACTS, 1862 TO 1878.

	PAGE
1. Formation and Alteration of Highway Districts.	
Provisional orders forming districts . . . . .	1
Making, confirmation, and approval of orders . . . . .	2
Extra-parochial places . . . . .	4
Outlying parts of parishes, and union of parishes in different counties . . . . .	5
Alteration or dissolution of highway districts . . . . .	5
Extent of powers of justices . . . . .	8
Alteration of rural sanitary district after rural sanitary authority has become Highway Board . . . . .	8
Constitution of local government district after formation of highway district . . . . .	8
Restrictions as to adoption of Act . . . . .	9
Legal objections to formation of district . . . . .	11
Validity of order of justices . . . . .	11
2. Consequences of Formation of Highway District.	
Transfer of property, powers, &c. . . . .	12
3. The Highway Board.	
Constitution of Highway Boards . . . . .	13
Rural sanitary authority of district coincident with highway district may become Highway Board . . . . .	14
Consequences of rural sanitary authority becoming Highway Board . . . . .	14
Liability of members of Board . . . . .	15
4. Proceedings of Highway Boards.	
Their meetings . . . . .	16
Quorum and voting at meetings . . . . .	17
Chairman and vice-chairman . . . . .	17
Orders and precepts of Board . . . . .	17
Summonses and notices . . . . .	18
Minutes of proceedings of Board to be received in evidence . . . . .	18

	PAGE
INTRODUCTION—(CONTINUED.)	
5. Election of Waywardens.	
Annual election . . . . .	19
Certificate as to election . . . . .	19
Vote of Waywarden . . . . .	20
6. Appointment and Duties of Officers.	
Clerk, treasurer, and surveyors . . . . .	20
Two offices not to be held by the same person . . . . .	21
Duties of treasurer . . . . .	21
Duties of clerk . . . . .	21
Duties of district surveyor . . . . .	22
Exemption from toll . . . . .	22
Outgoing surveyors . . . . .	22
Officers of Highway Board to account . . . . .	23
7. Maintenance of highways.	
Repair of Highways by Highway Board . . . . .	24
Contracts by waywardens . . . . .	25
Power of county authority to enforce performance of duty by defaulting highway authority . . . . .	25
Roads out of repair . . . . .	27
Expenses of repairs of highways . . . . .	27
Appearance of Highway Board before justices . . . . .	28
How, when obligation to repair is disputed . . . . .	28
Recovery of expenses of repair of highways repairable <i>ratione tenuræ</i> , &c. . . . .	29
Highways repairable <i>ratione tenuræ</i> may be made repair- able by the parish . . . . .	29
Driftways, private carriage or occupation roads . . . . .	30
Adoption of roads by councils of boroughs . . . . .	31
Discontinuance of unnecessary highways . . . . .	31
Main roads . . . . .	34
Roads over bridges . . . . .	35
Improvements to highways . . . . .	36
Contributions towards improvements in other parishes or districts . . . . .	37
Purchase of lands . . . . .	37
8. Miscellaneous Provisions as to Highways.	
Byelaws by county authority . . . . .	37
Appointment of surveyors in certain parishes . . . . .	39
Highways under local Acts . . . . .	39
Erection of fences by owners of adjoining lands . . . . .	40
Encroachments on highways . . . . .	40
Cattle found straying, &c., on highways . . . . .	41
Saving for minerals under disturnpiked roads . . . . .	41
9. Expenses of Highway Boards.	
How to be charged . . . . .	42
Expenses of maintenance of main roads . . . . .	43
Expenses of rural sanitary authorities as Highway Boards . . . . .	44
Mode of raising contributions to general expenses of rural sanitary authority . . . . .	44

INTRODUCTION—(CONTINUED.)

9. Expenses of Highway Boards ( <i>con.</i> )	
Remedy for non-payment of amount required by precept of rural sanitary authority.	45
Precepts of Highway Boards not being rural sanitary authorities for payment of money to treasurer	46
In the case of a highway parish	46
In the case of a poor law parish	47
Limitation of amount to be levied	47
Charges on rates	48
Power to levy rates	48
Appeals against rates	48
Mode of enforcing payments to Highway Boards not being rural sanitary authorities	48
Appointment of collectors of highway rates by waywardens	49
Power of road authority to recover expenses of extraordinary traffic	49
10. Borrowing powers of Highway Board.	
Power to borrow on credit of rates	50
Mortgages	51
11. Accounts of Highway Board.	
When to be made up, audited, and published	52
Statements of accounts	54
12. Recovery of Penalties, Appeals, &c.	
Recovery of penalties, &c.	54
Appeal to quarter sessions against conviction or order	55
Appeal to special sessions against rates	56
Appeal to quarter sessions against expenditure, &c.	56
Conditions of appeal against expenditure, &c.	57
Reference to arbitration	58
Proceedings on appeal against expenditure, &c.	58
Costs of appeal against expenditure, &c.	59
Appeal against order declaring highway repairable by the parish	60
Jurisdiction of justices.	60
13. Definitions and Construction of Acts.	
Definition of terms	60
Construction of Highway Acts	64

INTRODUCTION, PART II.

THE LOCOMOTIVE ACTS, 1861 to 1878.

1. Preliminary.	
Continuance and extent of the Locomotive Acts	66
Definitions	66



	PAGE
INTRODUCTION—(CONTINUED.)	
2. Construction and weight of Locomotives.	
Weight of locomotives and construction of wheels . . . . .	67
Fine for using locomotive improperly constructed . . . . .	68
Weight on each pair of wheels . . . . .	68
Steam locomotives to be so constructed as to consume their smoke . . . . .	69
Weight of locomotive and name and residence of owner to be affixed thereto . . . . .	70
3. Mode of using Locomotives.	
Rules for the manner of working locomotives on turnpike roads or highways . . . . .	70
Penalty on non-compliance with rules . . . . .	71
Limit of speed of locomotives on turnpike roads and high- ways . . . . .	71
Use of locomotives restricted over suspension and other bridges . . . . .	72
Saving for locomotives used for ploughing purposes . . . . .	72
Power to local authority to make orders as to hours during which locomotives may pass over roads . . . . .	73
Power of county authority to license locomotives . . . . .	73
Confirmation of byelaws . . . . .	74
4. Injury caused by Locomotives.	
Damage caused by locomotives to bridges to be made good by owners . . . . .	74
Right of action in case of nuisance . . . . .	75
Saving as to actions at law . . . . .	75
5. Miscellaneous Provisions.	
Turnpike tolls in respect of locomotives . . . . .	76
Provisions of general Acts relating to turnpike roads to apply to locomotives . . . . .	76
Recovery of penalties, appeals, &c. . . . .	76

# PART I.

## THE HIGHWAY ACT, 1862.

25 & 26 VICT. c. 61.

<b>Preliminary.</b>	<b>PAGE</b>
s. 1. Limits of Act . . . . .	78
s. 2. Definition of "county" and "borough" . . . . .	78
s. 3. Definition of "parish," "highway district," and "Highway Board" . . . . .	79
s. 4. Definition of "Principal Act" and "Highway Act" . . . . .	79
<b>Formation of Highway Districts.</b>	
s. 5. Powers to justices, in general or quarter sessions assembled, to issue provisional orders forming highway districts . . . . .	80
s. 6. Regulations as to the making, &c., of orders of justices . . . . .	82
s. 7. Restrictions on formation of highway districts . . . . .	85
<b>Legal Objections to formation of District.</b>	
s. 8. Rules as to objections and evidence . . . . .	88
<b>Highway Board.</b>	
s. 9. Constitution of Highway Board . . . . .	89
<b>Election of Waywardens.</b>	
s. 10. Election of waywardens . . . . .	91
<b>Consequences of Formation of Highway District.</b>	
s. 11. Consequences of establishment of Highway Board . . . . .	94
<b>Appointment of Officers.</b>	
s. 12. Power of Highway Board to appoint officers . . . . .	96
s. 13. Two offices not to be held by the same person . . . . .	97
s. 14. Duties of treasurer . . . . .	98
s. 15. Duties of clerk . . . . .	98
s. 16. Duties of district surveyor . . . . .	98
<b>Works and Duties of Board.</b>	
s. 17. Board to maintain highways . . . . .	99
s. 18. Proceedings where roads are out of repair . . . . .	100
s. 19. When obligation to repair is disputed . . . . .	102
<b>Expenses.</b>	
s. 20. Expenses, how charged . . . . .	Repealed.
s. 21. Mode of defraying expenses . . . . .	"
s. 22. Provision where parish as defined by Act not co-extensive with parish maintaining its own poor . . . . .	"

## 25 &amp; 26 VIOT. c. 61—(CONTINUED.)

Expenses (*con.*)

- s. 23. Power to overseers, &c., to levy rates for making payments to Highway Board . . . . . Repealed.
- s. 24. Mode of enforcing payments to Highway Boards . . . . . "

## Accounts.

- s. 25. Accounts to be made up to 25th March and statement to be published . . . . . "
- s. 26. Power to appeal in respect of account of Board . . . . . "
- s. 27. Clerk of Highway Board to transmit statement to Secretary of State—penalty for neglect . . . . . 104
- s. 28. Abstract of statements to be laid before Parliament . . . . . 107
- s. 29. Secretary of State may cause form of statement to be prepared . . . . . 108
- s. 30. Quarterly account to be sent to overseers. Repealed.
- s. 31. Officers appointed by Highway Board to account to them when required . . . . . 108

## Supplemental Provisions.

- s. 32. Provision as to extra-parochial places . . . . . 110
- s. 33. Provision for outlying part of parishes . . . . . 111
- s. 34. Expenses of repair of highways may be recovered from party liable to repair *ratione tenuræ* . . . . . 111
- s. 35. Highways repairable *ratione tenuræ* may be made repairable by the parish . . . . . 112
- s. 36. Provision as to roads laid out . . . . . 114
- s. 37. Surveyor of Highway Board exempted from turn-pike tolls . . . . . 114
- s. 38. Limiting jurisdiction of justices . . . . . 115
- s. 39. Power to alter highway districts . . . . . 116
- s. 40. Provision in case of failure of Board to hold first meeting . . . . . 117
- s. 41. Reservation of right to adopt Local Government Act . . . . . 118

## Application of Principal Act.

- s. 42. Construction of principal Act and this Act . . . . . 118
- s. 43. Relative duties of outgoing surveyors and Highway Board . . . . . 120
- s. 44. Provisions of principal Act to be applicable to highways under local or personal Acts . . . . . 122
- s. 45. Enabling councils of certain boroughs to adopt parish roads and highways, and to apply rates for their repair . . . . . 122
- s. 46. District Highway Boards may permit landowners to erect fences without incurring liability to repair highways . . . . . 123
- s. 47. Recovery of penalties . . . . . 124

- Schedule . . . . . 125



## THE HIGHWAY ACT, 1864.

27 &amp; 28 VICT. c. 101.

Preliminary.	PAGE
s. 1. Short titles of Highway Acts . . . . .	126
s. 2. This Act shall be construed with 25 & 26 Vict. c. 61 . . . . .	127
s. 3. Definition of "poor law parish," "highway parish," "highway rate," and "county" . . . . .	127
Amendments as to Orders of Justices.	
s. 4. Amendment of section 6 of Highway Act of 1862 . . . . .	127
s. 5. Certain places to be deemed places separately main- taining their own highways . . . . .	128
s. 6. Part of s. 5 of Highway Act of 1862 repealed, and other provisions enacted . . . . .	130
s. 7. Amendment of s. 7 of Highway Act of 1862 as to combination of townships, &c. . . . .	130
s. 8. Provision for places partly within and partly without a borough . . . . .	131
s. 9. Power of justices as to extra-parochial places . . . . .	132
s. 10. Part of s. 6 of Highway Act of 1862 as to meeting of Board repealed, and other provisions enacted . . . . .	132
s. 11. Power to justices to bring Highway Act into opera- tion on a particular day . . . . .	133
s. 12. Publication of orders in <i>Gazette</i> made permissive . . . . .	135
s. 13. As to union of parishes in different counties . . . . .	136
s. 14. Amendment of s. 39 of Highway Act, 1862 . . . . .	136
s. 15. As to the costs of parishes applying to be removed from one district to another . . . . .	137
s. 16. As to validity of order of justices . . . . .	137
s. 17. Extent of powers of justices . . . . .	138
s. 18. Definition of "provisional and final orders" . . . . .	138
Miscellaneous Amendments.	
s. 19. Appointment and vote of waywardens . . . . .	138
s. 20. Power to waywardens to contract for supply or cart- age of materials . . . . .	139
s. 21. Provisions for discontinuance of maintenance of un- necessary highways . . . . .	140
s. 22. Highway Board may contract to repair highways for the repair of which other parties are liable . . . . .	142
s. 23. Amendment of s. 34 of Highway Act, 1862 . . . . .	144
s. 24. Amendment of s. 35 of Highway Act of 1862 . . . . .	144
s. 25. Section 74 of 5 & 6 Wm. IV. c. 50, repealed, and other provisions made as to cattle found straying, &c., on highways . . . . .	144
s. 26. As to service of notices issued by Highway Board . . . . .	146
s. 27. Schedule to Highway Act of 1862 repealed, and other regulations made . . . . .	147

27 & 28 VICT. c. 101 (CONTINUED.)	PAGE
Miscellaneous Amendments ( <i>con.</i> )	
s. 28. Amendment of s. 43 of Highway Act, 1862 . . .	147
s. 29. Qualification of ex-officio waywardens . . .	147
s. 30. Appointment of officers of Board . . .	148
s. 31. Power to appoint paid collectors of highway rates . .	148
As to Expenses of Board.	
s. 32. Repeal of sections 20, 21, 22, 23, and 24 of Highway Act, 1862 . . .	149
Expenses, how to be charged . . .	149
s. 33. Mode of defraying expenses of the Highway Board .	151
s. 34. Power to levy rates for making payments to Highway Board . . .	155
s. 35. Mode of enforcing payments to Highway Boards . .	155
Accounts of Board.	
s. 36. Sections 25, 26, and 30 of Highway Act, 1862, repealed, and other provisions substituted . . .	156
s. 37. Persons aggrieved by rates levied may appeal in manner provided by 6 & 7 Wm. IV. c. 96 . . .	157
s. 38. Power to appeal to quarter sessions against items of expense and expenditure, &c. . . . .	159
s. 39. Conditions of appeal to general or quarter sessions .	160
s. 40. Power to refer case to arbitration . . . . .	160
s. 41. Provisions of 17 & 18 Vict. c. 125, incorporated . .	162
s. 42. Proceedings on appeal . . . . .	162
s. 43. Costs of appeal . . . . .	163
s. 44. Jurisdiction as to districts in different counties . .	164
Supplemental Provisions.	
s. 45. In case of default of Highway Board appointing officers . . . . .	165
s. 46. Jurisdiction of justices in petty sessions . . . .	165
s. 47. Power of Highway Board to make improvements and borrow money for the same, but previously to cause an estimate to be made . . . . .	166
s. 48. Definition of improvements . . . . .	170
s. 49. Power for parishes and districts to contribute to improvements . . . . .	170
s. 50. Certain clauses of 10 & 11 Vict. c. 16, incorporated .	171
s. 51. As to encroachments on highways . . . . .	171
s. 52. Power to contract for materials for repairing highways . . . . .	173
s. 53. 8 & 9 Vict. c. 18, and 23 & 24 Vict. c. 106, incorporated . . . . .	174
First Schedule.	
Proceedings of Highway Boards . . . . .	176
Second Schedule.	
Form of mortgage . . . . .	178
Transfer of mortgage by indorsement . . . . .	179

**THE HIGHWAYS AND LOCOMOTIVES  
(AMENDMENT) ACT, 1878.**

41 & 42 VICT. c. 77.

<b>Preliminary.</b>	<b>PAGE</b>
s. 1. Short title . . . . .	180
s. 2. Application of Act . . . . .	180

**PART I.**

*Amendment of Highway Law.*

**Highway Districts.**

s. 3. Highway districts to be made so far as possible coincident with rural sanitary districts . . . . .	181
s. 4. Power for rural sanitary authority of district coincident with highway district to become Highway Board . . . . .	182
s. 5. Consequence of rural sanitary authority becoming Highway Board . . . . .	184
s. 6. Highway Boards may combine to appoint a district surveyor . . . . .	186
s. 7. Expenses of Highway Boards to be paid out of district fund . . . . .	187
s. 8. Charge of moneys to be hereafter borrowed . . . . .	189
s. 9. Audit of accounts of highway districts and parishes . . . . .	189
s. 10. Power of county authority to enforce performance of duty by defaulting highway authority . . . . .	196
s. 11. Duration of office of waywarden . . . . .	198
s. 12. Repeal of part of s. 7 of 25 & 26 Vict. c. 61 . . . . .	199

**Main roads.**

s. 13. Disturnpiked roads to become main roads, and half the expense of maintenance to be contributed out of county rate . . . . .	199
s. 14. Description of highway areas . . . . .	201
s. 15. Power to declare ordinary highway to be a main road . . . . .	202
s. 16. Power to reduce main road to status of ordinary highway . . . . .	204
s. 17. Turnpike road in several counties . . . . .	205
s. 18. Accounts of expenses of maintenance of main roads . . . . .	203
s. 19. Highway district situate in more than one county . . . . .	205
s. 20. Repair of main roads in certain cases . . . . .	205

**Bridges.**

s. 21. Certain existing bridges may be accepted by county authority . . . . .	206
s. 22. Contribution out of county rates towards erecting bridges . . . . .	207

41 & 42 VIOT. C. 77—(CONTINUED.)	PAGE
Extraordinary traffic.	
s. 23. Power of road authority to recover expenses of extraordinary traffic . . . . .	207
Discontinuance of unnecessary Highways.	
s. 24. Unnecessary highways may be declared not repairable at the public expense. . . . .	208
Appointment of Surveyors in certain Parishes.	
s. 25. Removal of doubt as to appointment of surveyors in certain parishes . . . . .	211
Byelaws by County Authority.	
s. 26. Power of county authority to make byelaws . . . . .	212
Saving for Minerals.	
s. 27. To whom minerals under disturnpiked roads are to belong . . . . .	214

## PART II.

*Amendment of Locomotive Acts, 1861 and 1865.*

\* \* \* \*

## PART III.

## Procedure and Definitions.

s. 34. Confirmation of Provisional Order. . . . .	216
s. 35. Confirmation of byelaws . . . . .	216
s. Recovery of penalties and expenses . . . . .	216
s. 37. Form of appeal to quarter sessions . . . . .	218
s. 38. Interpretation . . . . .	220

## PART II.

## THE LOCOMOTIVE ACT, 1861.

24 &amp; 25 VICT. c. 70.

	PAGE
s. 1. Scale of tolls to be taken after the passing of this Act	225
s. 2. Repeal of former enactments as to tolls to be taken for locomotives . . . . .	227
s. 3. As to the size and weight of locomotives (repealed as to England) . . . . .	227
s. 4. As to the weight on each pair of wheels . . . . .	228
s. 5. Power to Secretary of State to prohibit the use of locomotives destructive to highways or dangerous to the public . . . . . Repealed.	
s. 6. Use of locomotives restricted over suspension and other bridges . . . . .	231
s. 7. Damage caused by locomotives to bridges to be made good by owners . . . . .	232
s. 8. Locomotives propelled by steam to consume their own smoke (repealed as to England) . . . . .	233
s. 9. As to the number of persons in charge of locomotive and waggons. Lights to be used at night . . . . . Repealed.	
s. 10. Exemption from tolls of waggons, &c., now exempt under any General or Local Act. . . . .	234
s. 11. Limit of speed of locomotives on public highways, &c. . . . . Repealed.	
s. 12. Provisions of General Acts relating to turnpike roads to apply to locomotives . . . . .	234
s. 13. Right of action in case of nuisance . . . . .	235
s. 14. Short title . . . . .	235
s. 15. Extent of Act . . . . . Repealed.	

## THE LOCOMOTIVES ACT, 1865.

28 &amp; 29 VICT. c. 83.

s. 1. Commencement of Act . . . . .	236
s. 2. Certain sections of 24 & 25 Vict. c. 70 repealed . . . . .	236
s. 3. Rules for the manner of working locomotives on turnpike roads and highways as herein stated . . . . .	237
Penalty on non-compliance with rules . . . . .	238
s. 4. Limit of speed of locomotives on turnpike roads and highways . . . . .	238
s. 5. Size and weight of locomotives which may be used . . . . .	239
s. 6. Restrictions as to the use of steam engines within twenty-five yards of roads not to apply to locomotives used for ploughing purposes . . . . .	239
s. 7. Name and residence of owner to be affixed to locomotives . . . . .	240

	PAGE
41 & 42 VICT. c. 77—(CONTINUED.)	
s. 8. Power to local authorities to make orders as to hours, &c., locomotives may pass through cities, &c. (repealed as to England) . . . . .	241
s. 9. In Ireland the county surveyor to be deemed conservator of the roads in his county, and proceedings for damages to be taken in his name . . . . .	242
s. 10. How penalties to be recovered and applied in Ireland . . . . .	242
s. 11. Sect. 41 of 25 & 26 Vict. c. 93, not to be affected . . . . .	242
s. 12. Saving as to actions at law . . . . .	243
s. 13. Short title . . . . .	244

### THE HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878.

#### 41 & 42 VICT. c. 77.

#### Preliminary.

s. 1. Short title . . . . .	245
s. 2. Application of Act . . . . .	245

#### PART I.

##### *Amendment of Highway Law.*

\* \* \* \* \*

#### PART II.

##### *Amendment of Locomotive Acts, 1861 and 1865.*

s. 28. Weight of locomotives and construction of wheels . . . . .	246
s. 29. Amendment of 28 & 29 Vict. c. 83, s. 3 . . . . .	249
s. 30. Steam locomotives to be constructed so as to consume their smoke . . . . .	249
s. 31. Power to local authorities to make orders as to hours during which locomotives may pass over roads . . . . .	250
s. 32. Power of county authority to license locomotives . . . . .	250
s. 33. Duration of Part II. of Act . . . . .	251

#### PART III.

#### Procedure and Definitions.

s. 34. Confirmation of provisional order . . . . .	221
s. 35. Confirmation of byelaws . . . . .	252
s. 36. Recovery of penalties and expenses . . . . .	252
s. 37. Form of appeal to quarter sessions . . . . .	253
s. 38. Interpretation . . . . .	255

## PART III.

## TURNPIKE CONTINUANCE ACTS.

	PAGE
An Act to amend the law relating to the Repair of Turnpike Roads in England and to continue certain Turnpike Acts in Great Britain. 26 & 27 Vict. cap. 94. 28th July, 1863.	
a. 1. For removing doubts as to Highway Boards established under 25 & 26 Vict. c. 61, being liable to contribute to repair of turnpike roads, in pursuance of 4 & 5 Vict. c. 59, &c. As to term "local Act" . . . . .	257
An Act to continue certain Turnpike Acts in Great Britain. 28 & 29 Vict. cap. 107. 5th July, 1865.	
a. 2. Application of secs. 118 & 124 of 3 Geo. IV. c. 126, to turnpike roads that have become ordinary highways. . . . .	260
a. 3. Meetings of trustees or commissioners . . . . .	261
An Act to continue certain Turnpike Acts in Great Britain, and to make further provision concerning Turnpike Roads. 29 & 30 Vict. cap. 105. 10th August, 1866.	
a. 2. Amendment of provisions of 4 Geo. IV. c. 95, s. 57 respecting toll-houses which have become useless . . . . .	262
An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further provision concerning Turnpike Roads. 30 & 31 Vict. cap. 121. 20th August, 1867.	
a. 2. As to trustees of turnpike road holding shares in companies which contract to supply gas, &c., to roads . . . . .	263
a. 3. On expiration of trust balance to be paid to parishes . . . . .	264
a. 4. Provision as to drivers of carts, &c., riding on carriages on turnpike roads . . . . .	264
a. 5. Ratepayers to have access to accounts of trust where repairs borne by parish . . . . .	264
a. 6. Provision for audit of accounts in cases herein named . . . . .	265
An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further provision concerning Turnpike Roads. 31 & 32 Vict. cap. 99. 31st July, 1868.	
a. 6. Extension of the operation of the Act of 12 & 13 Vict. c. 46 . . . . .	265
a. 7. If road in repair, compensation may be given to officers of expired trust . . . . .	266
a. 8. Sect. 3 of 30 & 31 Vict. c. 121, to apply to roads which previously became ordinary highways . . . . .	266
An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further pro-	

	PAGE
<b>TURNPIKE CONTINUANCE ACTS—(CONTINUED.)</b>	
visions concerning Turnpike Roads. 32 & 33 Vict. cap. 90. 9th August, 1869.	
s. 7. Explanation of 3 & 4 Wm. IV. c. 80 . . . . .	267
<b>An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further pro- visions concerning Turnpike Roads. 33 &amp; 34 Vict. cap. 73. 9th August, 1870.</b>	
s. 10. Maintenance of certain highways . . . . .	268
s. 11. Stone, &c., to be raised within any highway district . . . . .	268
s. 12. Bridges to become county bridges. 5 & 6 Wm. IV. c. 50, s. 21 . . . . .	269
s. 13. Turnpike roads extending into two counties . . . . .	270
<b>An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further pro- visions concerning Turnpike Roads. 34 &amp; 35 Vict. cap. 115. 21st August, 1871.</b>	
s. 15. Contribution of Highway Board to the repair of a turnpike road to be charged to the district fund . . . . .	270
s. 16. Moneys paid from a Turnpike trust on its expiration to the treasurer of a Highway Board to go to district fund for common use of district . . . . .	271
s. 17. On expiration of a trust, toll-houses, &c., not to be sold without consent of highway authority . . . . .	271
s. 18. Extension of 28 & 29 Vict. c. 107, s. 3 . . . . .	272
s. 19. Provision for extinction of unclaimed mortgage debts . . . . .	273
s. 20. 4 Geo. IV. c. 95, s. 75, to be repealed, and the pro- visions of 27 & 28 Vict. c. 101, s. 25, to be enacted . . . . .	273
<b>An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further pro- visions concerning Turnpike Roads. 35 &amp; 36 Vict. cap. 85. 10th August, 1872.</b>	
s. 13. Provisions in "Railway Clauses Consolidation Act, 1845," relating to turnpike roads to continue to apply to such roads on their becoming ordinary highways . . . . .	274
s. 14. Highway Board may voluntarily repair turnpike road at the cost of district fund . . . . .	275
s. 15. Power to Highway Boards to pay off debts on turn- pikes . . . . .	275
<b>An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and for other purposes con- nected therewith. 36 &amp; 37 Vict. c. 90. 5th August, 1873.</b>	
s. 13. Repeal (in part) of 4 Geo. IV. c. 95, s. 39 . . . . .	276
s. 14. Amendment of 8 Geo. IV. c. 126, s. 55 . . . . .	277
s. 15. Power to Local Government Board to assess value of debts . . . . .	277
s. 16. Power to raise money for abolition of tolls . . . . .	278



	PAGE
<b>TURNPIKE CONTINUANCE ACTS—(CONTINUED.)</b>	
An Act to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts; and for other purposes connected therewith. 37 & 38 Vict. cap. 95. 7th August, 1874.	
s. 10. Repair of roads by highway authorities in certain cases	279
s. 11. Apportionment of bonded debt under 36 & 37 Vict. c. 90, s. 15	279
An Act for consolidating and amending the Acts relating to Public Health in England. 38 & 39 Vict. cap. 55. 11th August, 1875.	
sch. v. part iii. Transfer of powers and duties of Secretary of State under Highway and Turnpike Acts to Local Government Board	280
An Act to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts; and for other purposes connected therewith. 38 & 39 Vict. c. xciv. 11th August 1875.	
s. 8. Extension of 4 & 5 Vict. c. 49	280
s. 9. Limitation of notice of sale of toll-houses, &c., under 34 & 35 Vict. c. 115.	281
s. 10. Repair and maintenance of hundred bridges in Kent	281
s. 11. Provision with respect to tolls in newly constituted sanitary districts	282
An Act to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts; and for other purposes connected therewith. 39 & 40 Vict. c. 39. 11th August, 1876.	
s. 8. Extension of time for giving notice for extinction of unclaimed mortgage debt	282
s. 9. Power to appoint a person to wind up an expired trust	283
s. 10. Provision for rateable distribution of funds in hand amongst creditors	283
An Act to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts; and for other purposes connected therewith. 40 & 41 Vict. c. 64. 14th August, 1877.	
s. 9. Amendment of s. 19 of 34 & 35 Vict. c. 115	283
An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith. 41 & 42 Vict. c. 62. 16th August, 1878.	
s. 8. Continuance of all other Turnpike Acts	284
s. 9. Alteration of dates for making up of accounts and estimates	284
s. 10. Alteration of date of annual meeting of Turnpike Trustees	285

## APPENDIX A.

## THE COMMISSIONERS CLAUSES ACT, 1847.

	PAGE
An Act for consolidating in One Act certain Provisions usually contained in Acts with respect to the Constitution and Regulation of Bodies of Commissioners appointed for carrying on undertakings of a public nature. 10 Vict. cap. 16. 23rd April, 1847.	
<b>Mortgages.</b>	
s. 75. Form of Mortgage . . . . .	287
s. 76. Register of mortgages to be kept and to be open to inspection . . . . .	288
s. 77. Transfer of mortgages . . . . .	288
s. 78. Register of transfers to be kept . . . . .	288
s. 79. Interest on mortgages to be paid half-yearly . . . . .	289
s. 80. Power to borrow money at a lower rate of interest, to pay off securities at a higher rate . . . . .	289
s. 81. Repayment of money borrowed at a time and place agreed upon . . . . .	289
s. 82. Repayment of money borrowed when no time or place has been agreed upon . . . . .	289
s. 83. Interest to cease on expiration of notice to pay off a mortgage debt . . . . .	290
s. 84. Moneys borrowed on security of rates to be paid off in a limited period . . . . .	290
s. 85. Mode of paying off mortgage debts . . . . .	290
s. 86. Arrears of interest, when to be enforced by appointment of a receiver—arrears of principal and interest . . . . .	291
s. 87. As to the appointment of receiver . . . . .	291
s. 88. Account books to be open to the inspection of mortgagees . . . . .	292
Schedule B. Form of mortgage . . . . .	292
Schedule C. Form of transfer of mortgage . . . . .	293

## COMMON LAW PROCEDURE ACT, 1854.

An Act for the further amendment of the Process, Practice, and Mode of Pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham. 17 & 18 Vict. cap. 125. 12th August, 1854.	
s. 3. Power to court or judge to direct arbitration before trial . . . . .	293
s. 4. Special case may be stated, and questions of fact tried . . . . .	294
s. 5. Arbitrator may state special case . . . . .	294

	PAGE
COMMON LAW PROCEDURE ACT—(CONTINUED.)	
s. 6. Power to judge to direct arbitration at time of trial, when issues of fact left to his decision . . . . .	294
s. 7. Proceedings before and power of such arbitrator . . . . .	295
s. 8. Power to send back to arbitrator . . . . .	295
s. 9. Application to set aside the award . . . . .	295
s. 10. Enforcing of awards within period for setting them aside . . . . .	295
s. 11. If action commenced by one party after all have agreed to arbitration, court or judge may stay proceedings . . . . .	295
s. 12. On failure of parties or arbitrators, judge may appoint single arbitrator or umpire . . . . .	295
s. 13. When reference is to two arbitrators, and one party fail to appoint, the other party may appoint arbitrator to act alone . . . . .	296
s. 14. Two arbitrators may appoint umpire . . . . .	296
s. 15. Award to be made in three months, unless parties or court enlarge time . . . . .	296
s. 16. Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment . . . . .	296
s. 17. Agreement or submission in writing may be made rule of court, unless a contrary intention appear . . . . .	296

## APPENDIX B.

### CONSTRUCTION AND REPAIR OF ROADS.

Construction and repair of roads . . . . .	297
Rollers . . . . .	301
Stone pavements. . . . .	302
Wood pavements. . . . .	303
Asphalte pavements . . . . .	304

### TABLES.

Duration of granite pavements in some principal streets in the city of London . . . . .	306
Ditto, on bridges . . . . .	307
Estimated duration and cost of granite pavements in principal carriageways in the city of London . . . . .	307
Duration and cost of Carey's wood pavements in the city of London . . . . .	308
Cost of other systems . . . . .	309
Cost of asphalte pavements laid and maintained by contract in the city of London . . . . .	310

INDEX . . . . .	311
-----------------	-----

## TABLE OF STATUTES.

	PAGE		PAGE
1 Mary, st. 2, c. 3, s. 8 . . .	89	4 Geo. IV. c. 95 . . .	257
43 Eliz., c. 2, s. 4 . . .	155	s. 2 . . .	248
5 & 6 W. & M. c. 11 . . .	194	s. 10 . . .	115
8 & 9 Wm. III. c. 3 . . .	194	s. 15 . . .	235, 240
5 Geo. II. c. 19, ss. 2, 3 . . .	194	s. 17 . . .	115
13 Geo. II. c. 18, s. 5. . .	194	s. 39 . . .	276
17 Geo. II. c. 3, s. 1 . . .	152	s. 56 . . .	269
c. 38, s. 2 . . .	192	s. 57 . . .	262
ss. 7-12 . . .	155	c. 95, s. 71 . . .	269
32 & 33 Geo. III. c. 14 . . .	140	s. 75 . . .	145, 273
41 Geo. III. c. 23, ss. 1, . . .		sch. I. . .	229
2, 3, 7 . . .	155	5 Geo. IV. c. 69, s. 1 . . .	257
43 Geo. III. c. 59, s. 5 . . .	206, 207	7 & 8 Geo. IV. c. 17 . . .	155
s. 2 . . .	208	c. 24 . . .	257
s. 4 . . .	233	s. 15 . . .	269
53 Geo. III. c. xcii. . .	85, 181	9 Geo. IV. c. 77 . . .	257
54 Geo. III. c. 91 . . .	92	11 Geo. IV. c. 70, s. 25 . . .	80, 81
c. 170, s. 12 . . .	155	1 Wm. IV. c. 70, s. 25 . . .	80, 81
57 Geo. III. c. 93 . . .	155	1 & 2 Wm. IV. c. 25 . . .	257
58 Geo. III. c. 69 . . .	123	c. 58 . . .	163
3 Geo. IV. c. 126 . . .	257	2 & 3 Wm. IV. c. 124 . . .	257
s. 9 . . .	227	3 & 4 Wm. IV. c. 80 . . .	257, 267,
s. 12 . . .	228	285	
s. 13 . . .	229	4 & 5 Wm. IV. c. 47 . . .	81
s. 14 . . .	229	c. 76, s. 38 . . .	89
s. 15 . . .	229	s. 47 . . .	192
s. 16 . . .	229	s. 99 . . .	190, 193
s. 26 . . .	115	s. 109 . . .	87
s. 27 . . .	115	c. 81. . .	257
s. 28 . . .	115	5 & 6 Wm. IV. c. 18 . . .	257
s. 32 . . .	114	c. 33. . .	194
s. 55 . . .	269, 277	c. 50, s. 6 . . .	91
s. 118 . . .	143, 260	s. 7 . . .	92, 134
s. 121 . . .	213	s. 9 . . .	92, 119
s. 124 . . .	143, 261	s. 10 . . .	119
s. 126 . . .	213	s. 11 . . .	92, 134
4 Geo. IV. c. 16 . . .	257	ss. 13-17, . . .	119
s. 1 . . .	234	s. 18 . . .	85, 98, 119

## TABLE OF STATUTES.

XXV

	PAGE		PAGE
5 & 6 Wm. IV. c. 50 ( <i>con.</i> )		4 & 5 Vict. c. 59 ( <i>con.</i> )	
s. 19	98, 119, 199	s. 2 . . .	258
s. 20 . . .	119	s. 3 . . .	258
s. 21 . . .	269	s. 4 . . .	259
s. 23 . . .	211	5 & 6 Vict. c. 57, s. 13 . . .	90
s. 27 . . .	152	7 & 8 Vict. c. 52, s. 3 . . .	257
s. 29 . . .	154	c. 101, s. 32 . . .	190, 192
s. 33 . . .	154	s. 33 . . .	189, 193
s. 34 . . .	148	s. 35 . . .	194
s. 35 . . .	120	s. 36 . . .	194
s. 36 . . .	148	8 Vict. c. 18 . . .	174, 175
s. 37 . . .	148	8 & 9 Vict. c. 20, ss. 46-67 . . .	274
s. 39 . . .	120, 149	c. 71, s. 1 . . .	94
s. 40 . . .	120	c. 109, s. 19 . . .	163
s. 41 . . .	94	sch. II. . . .	163
s. 42 . . .	121	9 & 10 Vict. c. 93, s. 1 . . .	243
s. 43 . . .	120, 121	10 Vict. c. 16, ss. 75-88 . . .	171, 287-292
s. 44 . . .	120, 195, 196	sch. B. . . .	292
s. 45 . . .	120, 166, 196	sch. C. . . .	293
s. 46 . . .	139, 140, 196	10 & 11 Vict. c. 89, s. 28 . . .	264
s. 48 . . .	94	s. 71 . . .	213
s. 62 . . .	112, 114	s. 72 . . .	214
s. 69 . . .	124, 172	11 & 12 Vict. c. 43 . . .	217, 252
s. 70 . . .	239	s. 33 . . .	217
s. 72 . . .	172	c. 63 . . .	85
s. 74 . . .	144	s. 68 . . .	214
s. 76 . . .	234, 240	c. 91, s. 4 . . .	195
s. 78 . . .	264	s. 5 . . .	191
ss. 84-93 . . .	141, 209	s. 7 . . .	189
s. 88 . . .	141	s. 8 . . .	192
s. 94 . . .	104	s. 9 . . .	192
s. 95 . . .	101, 103, 104	s. 10 . . .	189
s. 109 . . .	100	sch. . . .	191
c. 76, s. 37 . . .	205	12 Vict. c. 14 . . .	155, 156
s. 93 . . .	205	12 & 13 Vict. c. 35 . . .	108
s. 142 . . .	79	c. 45, s. 1 . . .	218, 253
6 & 7 Wm. IV. c. 96, s. 1 . . .	150	s. 11 . . .	219
s. 6 . . .	158	s. 18 . . .	117, 162
s. 7 . . .	158	c. 46 . . .	265
1 Vict. c. 45, s. 2 . . .	152	c. 87 . . .	257
c. 81 . . .	200	s. 6 . . .	267, 268, 285
2 & 3 Vict. c. 46 . . .	257	c. 103, s. 7 . . .	187
c. 47, s. 54 . . .	144	s. 8 . . .	189
c. 84, s. 1 . . .	187	s. 9 . . .	192
3 & 4 Vict. c. 39 . . .	257	s. 11 . . .	193
c. 51 . . .	234, 257	c. lxxvi. s. 15 . . .	227
4 & 5 Vict. c. 33 . . .	257	13 & 14 Vict. c. 38 . . .	257
c. 49, s. 1 . . .	208, 280, 281	c. 79, s. 3 . . .	234
c. 51 . . .	257	c. 101, s. 10 . . .	200
c. 59 . . .	142	c. 38 . . .	257
s. 1 . . .	258		

	PAGE		PAGE
14 & 15 Vict. c. 90 . . . . .	242	25 & 16 Vict. c. 61 (con.)	
c. 93 . . . . .	242	s. 14 . . . . .	21
c. 105, s. 9 . . . . .	187	s. 15 . . . . .	22
15 & 16 Vict. c. 81 . . . . .	200	s. 16 . . . . .	22
16 & 17 Vict. c. 135 . . . . .	257	s. 17 . . . . .	25
17 & 18 Vict. c. 58 . . . . .	257	s. 18 . . . . .	28
c. 125, ss. 3-17 . . . . .	162, 293-296	s. 19 . . . . .	28
18 & 19 Vict. c. 120, schs. A, B, C . . . . .	86, 223	s. 20 . . . . .	149
20 Vict. c. 19, s. 1 . . . . .	110, 111	s. 21 . . . . .	149
ss. 4, 8 . . . . .	111	s. 22 . . . . .	149
20 & 21 Vict. c. 50 . . . . .	123	s. 23 . . . . .	149
21 & 22 Vict. c. 33 . . . . .	200	s. 24 . . . . .	149
c. 73, s. 1 . . . . .	217	s. 25 . . . . .	156
s. 2 . . . . .	217	s. 26 . . . . .	156
ss. 3, 4 . . . . .	217	s. 27 . . . . .	54
c. 74, s. 5 . . . . .	294	s. 28 . . . . .	54
c. 98 . . . . .	85	s. 29 . . . . .	54
23 & 24 Vict. c. 68 . . . . .	85, 215	s. 30 . . . . .	156
s. 22 . . . . .	155	s. 31 . . . . .	24
s. 23 . . . . .	154	s. 32 . . . . .	5
s. 31 . . . . .	108	s. 33 . . . . .	5
s. 36 . . . . .	112	s. 34 . . . . .	29
s. 37 . . . . .	114	s. 35 . . . . .	30
s. 40 . . . . .	103	s. 36 . . . . .	30
s. 44 . . . . .	85	s. 37 . . . . .	22
c. 106 . . . . .	174, 175	s. 38 . . . . .	60
24 & 25 Vict. c. 61, s. 9 . . . . .	129	s. 39 . . . . .	6
c. 70 . . . . .	224-235	s. 40 . . . . .	16
s. 1 . . . . .	76	s. 41 . . . . .	8
s. 2 . . . . .	76	s. 42 . . . . .	18, 65
s. 4 . . . . .	69	s. 43 . . . . .	23
s. 6 . . . . .	72	s. 44 . . . . .	39
s. 7 . . . . .	75	s. 45 . . . . .	31
s. 12 . . . . .	70, 76	s. 46 . . . . .	40
s. 13 . . . . .	75	s. 47 . . . . .	54
s. 15 . . . . .	66	sch . . . . .	147
c. 96, s. 110 . . . . .	124	c. 93, s. 41 . . . . .	242, 243
25 & 26 Vict. c. 61 . . . . .	78-125	c. 103 . . . . .	150
s. 2 . . . . .	61, 62, 67	s. 28 . . . . .	152
s. 3 . . . . .	62, 63	26 Vict. c. 17, s. 6 . . . . .	133, 176
s. 4 . . . . .	61	26 & 27 Vict. c. 61, s. 1 . . . . .	25, 139,
s. 5 . . . . .	1	s. 2 . . . . .	140
s. 6 . . . . .	3	s. 3 . . . . .	139
s. 7 . . . . .	10	s. 3 . . . . .	140
s. 8 . . . . .	11	c. 94 . . . . .	257
s. 9 . . . . .	13, 16, 19	s. 1 . . . . .	86, 142
s. 10 . . . . .	19	27 & 28 Vict. c. 39 . . . . .	150
s. 11 . . . . .	12	c. 101 . . . . .	126-179
s. 12 . . . . .	20	s. 2 . . . . .	61
s. 13 . . . . .	21	s. 3 . . . . .	62, 63, 67
		s. 4 . . . . .	7

## TABLE OF STATUTES.

xxvii

	PAGE		PAGE
27 & 28 Vict. c. 101 ( <i>con.</i> )		28 & 29 Vict. c. 83	286-244
s. 5 . . . . .	62	s. 3 . . . . .	70, 71
s. 6 . . . . .	1	s. 4 . . . . .	72
s. 7 . . . . .	10	s. 6 . . . . .	73
s. 8 . . . . .	11	s. 7 . . . . .	70
s. 9 . . . . .	5	s. 12 . . . . .	76
s. 10 . . . . .	3	s. 13 . . . . .	66
s. 11 . . . . .	4	c. 96, s. 30 . . . . .	142
s. 12 . . . . .	4	c. 107, s. 2 . . . . .	143, 260
s. 13 . . . . .	5	s. 3 . . . . .	143, 261
s. 14 . . . . .	7	29 & 30 Vict. c. 105, s. 2 . . . . .	262
s. 15 . . . . .	7	c. 113, s. 5 . . . . .	195
s. 16 . . . . .	11	s. 7 . . . . .	193
s. 17 . . . . .	8	s. 18 . . . . .	88
s. 19 . . . . .	20	30 & 31 Vict. c. 121, s. 2 . . . . .	263
s. 20 . . . . .	25	s. 3 . . . . .	142, 264
s. 21 . . . . .	34	s. 4 . . . . .	264
s. 22 . . . . .	36	s. 5 . . . . .	264
s. 23 . . . . .	29	s. 6 . . . . .	265
s. 24 . . . . .	29	31 & 32 Vict. c. 99, s. 6 . . . . .	265
s. 25 . . . . .	41, 273	s. 7 . . . . .	266
s. 26 . . . . .	18	s. 8 . . . . .	266
s. 27 . . . . .	16, 17, 18	c. 122, s. 24 . . . . .	189
s. 28 . . . . .	23	s. 27 . . . . .	132
s. 29 . . . . .	13	32 & 33 Vict. c. 90, s. 7 . . . . .	267
s. 30 . . . . .	20	33 & 34 Vict. c. 32, s. 11 . . . . .	140
s. 31 . . . . .	49	c. 73, s. 10 . . . . .	201, 268
s. 32 . . . . .	42	s. 11 . . . . .	268
s. 33 . . . . .	46, 47, 48	s. 12 . . . . .	269
s. 34 . . . . .	48	s. 13 . . . . .	270
s. 35 . . . . .	49	c. 97 . . . . .	96, 140, 142
s. 36 . . . . .	53	c. 99 . . . . .	142
s. 37 . . . . .	48, 56	34 & 35 Vict. c. 115, s. 15 . . . . .	270
s. 38 . . . . .	57	s. 16 . . . . .	271
s. 39 . . . . .	58	s. 17 . . . . .	271
s. 40 . . . . .	58	s. 18 . . . . .	272
s. 41 . . . . .	58	s. 19 . . . . .	273
s. 42 . . . . .	59	s. 20 . . . . .	273
s. 43 . . . . .	59	35 & 36 Vict. c. 79, s. 36 . . . . .	280
s. 44 . . . . .	60	c. 85, s. 13 . . . . .	274
s. 45 . . . . .	21	s. 14 . . . . .	275
s. 46 . . . . .	60	s. 15 . . . . .	37, 170, 275
s. 47 . . . . .	51	36 & 37 Vict. c. 90, s. 13 . . . . .	279
s. 48 . . . . .	37	s. 14 . . . . .	277
s. 49 . . . . .	37	s. 15 . . . . .	277, 279
s. 50 . . . . .	52	s. 16 . . . . .	278
s. 51 . . . . .	40	37 & 38 Vict. c. 54 . . . . .	152
s. 52 . . . . .	25	c. 95, s. 10 . . . . .	279
s. 53 . . . . .	37	s. 11 . . . . .	279
sch. I . . . . .	16, 17, 18	c. 96 . . . . .	259
28 Vict. c. 37 . . . . .	80	38 Vict. c. 23, s. 14 . . . . .	96

	PAGE		PAGE
38 & 39 Vict. c. 55, s. 4	222	41 & 42 Vict. c. 62 (con.)	
s. 5	221, 222	s. 9	284
s. 6	222	s. 10	285
s. 9	222	c. 70	236
ss. 146-148	143	c. 77	180-223, 245-256
s. 148	277	s. 2	66
s. 149	214, 215	s. 3	2, 6
s. 152	123	s. 4	14, 19
s. 216 63, 94, 119, 129		s. 5	8, 12, 15, 44
s. 229	44, 185	s. 6	20, 22
s. 230	45, 186	s. 7	43
s. 231	46, 187	s. 8	51
s. 247	204, 205	s. 9	52, 53
s. 269	48, 56	s. 10	27
s. 272	118	s. 11	4, 19
s. 313	85	s. 13	34, 43
s. 343	280	s. 15	35
sch. V. part iii.		s. 16	35
	176, 280	s. 17	34
c. 66 91, 121, 130, 133, 147,		s. 18	53
	149, 156	s. 19	44
c. exciv., s. 8	280	s. 20	44
s. 9	281	s. 21	36
s. 10	281	s. 22	36
s. 11	282	s. 23	50
39 & 40 Vict. c. 39, s. 8	282	s. 24	33
s. 9	283	s. 25	39
s. 10	283	s. 26	38
c. 61, s. 1	111	s. 27	41
s. 5	111	s. 28	68
s. 7	111	s. 29	70
s. 38	195	s. 30	69
40 & 41 Vict. c. 64, s. 9	283	s. 31	73
c. 66, s. 1	104	s. 32	73
s. 2	105	s. 34	35
s. 3	105	s. 35	39, 74
s. 4	105	s. 36	55, 76
s. 5	105	s. 37	56, 77
41 & 42 Vict. c. 62, s. 8	284	s. 38 61, 62, 63, 64, 67	



## TABLE OF CASES.

	PAGE
Bailey v. Jamieson . . . . .	141
Bartlett, <i>ex parte</i> . . . . .	103
Barton v. Piggott . . . . .	196
Bird v. Adcock . . . . .	153
Bluffield, Reg. v. . . . .	121
Body v. Jeffrey . . . . .	248
Bothamley v. Danby . . . . .	146
Buckinghamshire (Inhabitants), Reg. v. . . . .	269
Buckland, Reg. v. . . . .	103
Central Wingland, Reg. v. . . . .	111, 211
Coggins v. Bennett . . . . .	172
Cooper, Reg. v. . . . .	93
Cooper v. Wandsworth . . . . .	172
Coverdale v. Charlton . . . . .	214, 215
Dix, Reg. v. . . . .	93
Driver v. Kingston Highway Board. . . . .	174
Easton v. Richmond . . . . .	172
Edgware Highway Board v. Harrow District Gas Company . . . . .	99, 175
Farrar, Reg. v. . . . .	103
Field v. Thorne . . . . .	171
Fox, Reg. v. . . . .	263
French, Reg. v. . . . .	259
Gascoigne, Reg. v. . . . .	93, 128
Giles v. Glubb . . . . .	84, 136
Golding v. Stocking . . . . .	146
Goodson v. Richardson . . . . .	99
Harris v. Mobbs . . . . .	243
Heath, Reg. v. . . . .	154, 156, 188
Holland v. Northwich Local Board. . . . .	100
Hoole, Reg. v. . . . .	92
Horwood v. Goodall . . . . .	145
James, Reg. v. . . . .	103
Jones v. Festiniog Railway Company . . . . .	244
Kingsbridge Highway Board, Reg. v. . . . .	156, 188
Kitchener, Reg. v. . . . .	233
Lancashire J.J., Reg. v. . . . .	92
Lawrence v. King. . . . .	145
Lindsey J.J., Reg. v. . . . .	88, 89, 93, 176
Mill v. Hawker and others, and Wickett. . . . .	95

	PAGE
Milton near Sittingbourne v. Faversham District Highway Board	86
Morris v. Jeffries . . . . .	145
Odell, Reg. v. . . . .	101
Ormerod v. Chadwick . . . . .	167, 210
Radnor (Earl), Reg. v. . . . .	102
Ranking v. Forbes . . . . .	172
Rollett v. Corringham . . . . .	154
Rollett, Reg. v. . . . .	154
Royal Farmers' Insurance Company v. Fall . . . . .	244
Salop JJ., Reg. v. . . . .	218, 253
Sherborn v. Wells . . . . .	144
Somerset, Reg. v. . . . .	269
Stringer v. Sykes . . . . .	247
Surrey JJ., Reg. v. . . . .	141
Sussex JJ., Reg. v. . . . .	1
United Kingdom Electric Telegraph Company (Limited), Reg. v. . . . .	145
Walker v. Horner . . . . .	172
Warblington, <i>ex parte</i> . . . . .	167, 210
Williams v. Adams . . . . .	104
Wilts JJ., Reg. v. . . . .	102
Wrexham v. Hardcastle. . . . .	121
York (W. B.) JJ., Reg. v. . . . .	84, 135

# INTRODUCTION.

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## PART I.

### THE HIGHWAY ACTS, 1862 TO 1878.

#### 1. FORMATION AND ALTERATION OF HIGHWAY DISTRICTS.

##### *Provisional Orders forming Districts.*

ANY five or more justices of a county may by writing under their hands require the Clerk of the Peace to add to or send with the notice for holding courts of general or quarter sessions a notice that at the court a proposal will be made to the justices to divide the county or some part of it into highway districts, or to constitute the whole or some part of it a highway district. The justices may also require the Clerk of the Peace to send by post notices to the churchwardens or overseers of the several parishes proposed to be formed into a highway district.

Upon the requisition being complied with, the justices at the quarter sessions may entertain the proposal, and make a provisional order dividing the county or some part of it into highway districts, or constituting the whole or some part of it a highway district, for the more convenient management of highways. Such order, however, shall not be of any validity unless it is confirmed by a final order of the justices assembled at some subsequent court of general or quarter sessions. (a) When it is proposed that only a part of a county shall be constituted a highway district, not less than two out of the five justices making the proposal shall be resident in the district, or acting in the petty sessional division in which the district or some part of it is situate. (b)

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(a) 25 & 26 Vict. c. 61, s. 5.

(b) 27 & 28 Vict. c. 101, s. 6.

In forming any highway districts the justices, who are termed "the county authority" in the Act of 1878, shall have regard to the boundaries of the rural sanitary districts in their county, and shall, so far as may be found practicable, form highway districts so as to be coincident in area with rural sanitary districts, or wholly contained within rural sanitary districts. (c)

*Making, Confirmation, and Approval of Orders.*

The following are the regulations as to the making, confirmation, and approval of the orders of justices for forming highway districts:—

1. The justices making a provisional order shall appoint some subsequent court of general or quarter sessions, to be held within a period of not more than six months, for the taking into consideration the confirmation of the provisional order by a final order:
2. The Clerk of the Peace shall add to or send with the notice for holding of courts of general or quarter sessions a notice of the appointments so made by the justices in relation to the confirmation of the provisional order:
3. The justices assembled at the appointed court of general or quarter sessions may make a further order quashing the provisional order, or confirming it with or without variations, or respiting the consideration of it to some subsequent court of general or quarter sessions, provided,—

Firstly, that where the variations made extend to altering the parishes constituting any highway district or districts as formed in the provisional order, the order shall be deemed to be provisional only, and shall be dealt with accordingly:

Secondly, that where a respite is made to any subsequent general or quarter sessions, the Clerk of the Peace shall give notice of such respite in the manner in which he is required to give notice in respect of sessions at which a

provisional or final order is proposed to be made:

4. The provisional order shall state the parishes to be united in each district, the name by which the district is to be known, and the number of waywardens (such number to be at least one) which each parish is to elect: (d)
5. The first meeting of the Highway Board after the formation of a district shall be held at such time as may be appointed by the provisional or final order of the justices, so that the time appointed be not more than seven days after the expiration of the time limited by law for the election of waywardens, or, in the case of a special day being appointed for such election, be not more than twenty-one days after that day. The day appointed for the first meeting of the Board shall for all the purposes of the Highway Acts be deemed to be the day of the formation of the district; and the surveyor for the time being of every parish within the district shall continue in office until seven days after the appointment of the district surveyor, and no longer. (e)
6. Notice of the provisional and final orders shall as soon as possible after the making thereof be given by the Clerk of the Peace by publishing a copy in the *London Gazette*, and in one or more newspapers circulating in the county, or if the whole county is not affected by the order, in one or more newspapers circulating in the district affected by the orders, and by sending a copy by post in a prepaid letter to the overseers of every parish within the proposed highway district. There shall also be added to the notice of the provisional order the date of the sessions at which the confirmation of it will be considered: (f)

But the order shall not be invalidated by reason of its not being published in the *London Gazette*; and where any reference is made in the "Highway Act, 1862," to the date of the publication in the *Gazette* of the order, it shall

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(d) 25 & 26 Vict. c. 61, s. 6.

(e) 27 & 28 Vict. c. 101, s. 10.

(f) 25 & 26 Vict. c. 61, s. 6.

be construed as if the date of the making of the final order under which the district is formed were substituted for "the date of the publication in the *Gazette* of the order under which the district is formed;" and any copy of the provisional or final order of the justices forming a highway district, certified under the hand of the Clerk of the Peace to be a true copy, shall be receivable in all courts of justice and in all legal proceedings as evidence of the formation of the district and of the matters in the order mentioned. (g)

In forming a highway district the justices may, for the purpose of avoiding delay in bringing the Act into operation, appoint by their final order a day on which the first election of waywardens as members of the Highway Board is to take place in the district. On the day so appointed waywardens shall be elected in every parish in the district entitled to elect such officers by the same persons and in the same manner by and in which waywardens are elected under the "Highway Act, 1862," and all the provisions of the Highway Acts relating to the qualifications of surveyors or waywardens, and to the appointment of surveyors and waywardens by justices in the event of no election taking place, shall apply accordingly. (h) The waywardens so elected shall continue in office till the 30th of April in the year following the year in which they were elected, and on that day their successors shall come into office. (i)

#### *Extra-parochial Places.*

Where, in pursuance of the Act 20 Vict. c. 19, for the relief of the poor in extra-parochial places, any place is declared to be a parish, or where overseers of the poor are appointed for any place, such place shall for the purposes of the Act be deemed to be a parish separately maintaining its own highways; and where, in pursuance of ss. 4 or 8 of the 20th Vict. c. 19, any place is annexed to any adjoining parish, or to any district in which the relief of the poor is administered under a local Act, such place shall for the purposes of the Act be deemed to be annexed to the same parish or district for the purposes of the main-

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(g) 27 & 28 Vict. c. 101, s. 12.

(h) *Ibid.* s. 11.

(i) 41 & 42 Vict. c. 77, s. 11.

tenance of the highways, as well as for the other purposes in the Act mentioned. (j)

The justices in petty sessions may appoint overseers, or otherwise deal with any extra-parochial place with a view to constituting it a highway parish or part of a highway parish, in the same manner as the justices may deal with such place for the purpose of constituting it a place or part of a place maintaining its own poor, in pursuance of the powers for that purpose given by the 20 Vict. c. 19. (k)

*Outlying Parts of Parishes, and Union of Parishes in different Counties.*

Again, where part of a parish is not contiguous to the parish of which it is part, the outlying part may at the discretion of the justices be annexed to a district, and, when annexed, it shall, for all the purposes of the Highway Acts, be deemed to be a parish separately maintaining its own highways. (l)

Contiguous places situate in different counties and places situate partly in one county and partly in another county or counties shall, for the purpose of being united in one highway district, be deemed to be subject to the jurisdiction of the justices of any county, who may make a provisional and final order constituting them a highway district, in the same manner as if all such places or parts of places were situate in such last-mentioned county; subject to this proviso, that the provisional and final orders of the justices of the county shall be of no validity unless provisional and final orders to the same effect are passed either concurrently with or subsequently to the first-mentioned provisional and final orders by the justices of every other county in which any of the said places or parts of places are situate. (m)

*Alteration or Dissolution of Highway Districts.*

Any highway district formed under the Act may from time to time be altered by the addition of any parishes in the same or in any adjoining county, or the subtraction therefrom of any parishes, and new highway districts may

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(j) 25 & 26 Vict. c. 61, s. 32.

(k) 27 & 28 Vict. c. 101, s. 9.

(l) 25 & 26 Vict. c. 61, s. 33.

(m) 27 & 28 Vict. c. 101, s. 13.

be formed by the union of any existing highway districts in the same or in any adjoining county, or any parishes forming part of any existing highway districts, or any highway district may be dissolved. (n) But in altering the boundaries of any highway districts, the county authority shall have regard to the boundaries of the rural sanitary districts in their county, and shall, so far as may be found practicable, form highway districts so as to be coincident in area with rural sanitary districts, or wholly contained within rural sanitary districts. (o)

Any such alteration of existing districts, or formation of new districts, or dissolution of any district, shall be made by provisional and final orders of the justices; and all the provisions with respect to the formation of highway districts and provisional and final orders of justices, and the notices to be given of and previously to the making of such orders, and all other proceedings relating to the formation of highway districts, shall, in so far as the same are applicable, extend to such alteration of existing or formation of new districts, or dissolution of districts. In addition, provision shall be made, if necessary, in any orders of justices so made for the adjustment of any matters of account arising between parishes or parts of districts in consequence of the exercise of these powers. Where any parish is added to or any district united with any district in another county, the final order of the justices of the county in which the parish or district is situate shall not be confirmed by them until they shall have received the approval of their provisional order for the addition or union from the justices of the county in which the district is situate to or with which the addition or union is to be made. Where any highway district is dissolved, or where any parish is excluded from any highway district, the highways in the district or parish shall be maintained, and the provisions of the principal Act in relation to the election of surveyors and to all other matters shall apply to such highways, in the same manner as if they had never been included within the limits of a highway district. (p)

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(n) 25 & 26 Vict. c. 61, s. 39.

(o) 41 & 42 Vict. c. 77, s. 3.

(p) 25 & 26 Vict. c. 61, s. 39.



The approval of the justices of any county to any provisional order made by the justices of another county affecting any place in such first-mentioned county, in pursuance of the thirty-ninth section of the "Highway Act, 1862," shall be testified by provisional and final orders of the justices of the first-mentioned county; and the powers conferred on justices by the thirty-ninth section of the "Highway Act, 1862," shall be deemed to extend to the separation of any townships, tithings, hamlets, or places separately maintaining their own highways which may have been consolidated by any previous order of the justices, and to an alteration in the number of waywardens of any parish. (q)

Where after the formation of a highway district, an application is made by any parish in that district to any court of general or quarter sessions, praying that the parish may be removed from that district, all costs incidental to or consequential on such application and the removal of the parish shall, unless the court otherwise directs, be paid by the parish that has made the application in such manner as the said court may direct. The amount of such costs shall be raised in the same manner as if they were expenses incurred in maintaining and keeping in repair the highways of that parish. (r)

By the Act of 1864, where more highway districts than one are comprised in any order of justices, whether provisional or final, and whether made before or after the passing of the 27 & 28 Vict. c. 101, the formation of each of such districts is to be deemed independent of the formation of any other district, and the order shall for all purposes be construed and take effect as if a separate order had been made in respect of each district; any variation in a provisional order altering the parishes in any one or more districts comprised in that order shall make that order provisional only as to the particular district or districts in which the alterations are made, and not as to any other district or districts included in the same order. (s)

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(q) 27 & 28 Vict. c. 101, s. 14.

(s) Ibid. s. 4.

(r) Ibid. s. 15.

*Extent of Powers of Justices.*

All powers and jurisdictions vested in justices by the "Highway Acts, 1862 and 1864," may from time to time be exercised in relation to highway districts, highway boards, and highway parishes already formed, as well as upon the occasion of forming new highway districts, boards, or parishes; and where an alteration is made in part only of a highway district, the residue of that district shall not be affected thereby, but shall continue subject to the Highway Acts in the same manner as if no such alteration had been made. (t)

*Alteration of Rural Sanitary District after Rural Sanitary Authority has become Highway Board.*

If at any time after a rural sanitary authority has become invested with the powers of a highway board in the manner mentioned at page 14, *post*, the boundaries of the district of such authority are altered, the powers and jurisdiction of such authority in their capacity of highway board shall be exercised within such altered district; and on the application of any authority or person interested the Local Government Board may by order provide for the adjustment of any accounts, or the settlement of any doubt or difference so far as relates to highways consequent on the alteration of the boundaries of such rural sanitary district. (u)

*Constitution of Local Government District after formation of Highway District.*

Any parish or part of a parish included in a highway district may become a local government district in the same manner and under the same circumstances as if it had not been included in the highway district. Upon the constitution of such local government district, the parish or part of a parish shall cease to form part of the highway district, subject nevertheless to the payment of any contribution that may at the time of the adoption be due from the parish or part of a parish to the Highway Board. (v)

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(t) 27 & 28 Vict. c. 101, s. 17. (u) 41 & 42 Vict. c. 77, s. 5 (2).

(v) 25 & 26 Vict. c. 61, s. 41.

*Restrictions as to Adoption of Acts.*

The following restrictions are imposed with respect to the formation of highway districts:

Firstly, there shall not be included in any highway district any of the following places:—

Any part of a county to which the Act for the better Management and Control of the Highways in South Wales extends; the Isle of Wight; any district constituted under the Public Health Act, 1848, the Local Government Act, 1858, or the Public Health Act, 1875; any parish or place within the limits of the metropolis; any parish or place, or part of a parish or place, the highways whereof are maintained under the provisions of any local Act of Parliament.

Secondly, there shall not be included in any highway district any parish or place or part of a parish or place within the limits of a borough without the consent, firstly, of the council of the borough, and, secondly, of the vestry of the parish which, or part of which, is proposed to be included.

Thirdly, where any parish separately maintaining its own highways is situate in more than one county, the whole of such parish shall, for the purposes of the Acts, be deemed to be within the county within which the church of such parish, or (if there be no church) the greater part of it is situated.

Lastly, where a parish separately maintaining its own poor is divided into townships, tithings, hamlets, or places, each of which separately maintains its own highways, the justices may, if they think fit, in their provisional order, combine such townships, tithings, hamlets, and places, and declare that no separate waywardens shall be elected for them, and that such parish shall be subject to the same liabilities in respect of all the highways within it which were before maintained by the townships, tithings, hamlets, and places separately, as if all their several liabilities had attached to the whole parish; and a waywarden or waywardens shall be

elected for such parish as a whole; and where the order is made, all the provisions of the Acts in relation to parishes maintaining their own highways shall be applicable to the parish formed by such combination. (*w*)

And this power shall extend to combining any two or more of such townships, tithings, hamlets, or places, and any combination so formed shall for all the purposes of the Highway Acts be deemed to be a highway parish. Again, where a township, tithing, hamlet, or other place separately maintaining its own highways is situate in two or more poor law parishes, each part of such township, tithing, hamlet, or other place may be combined with the parish in which that part is situate. (*x*)

The justices may, by their provisional and final order, declare that any poor law parish within their jurisdiction, or residue thereof, after excluding such part, if any, as is prohibited by the "Highway Act, 1862," either wholly or without the consent of the governing body, from being included in the highway district, shall henceforward become a highway parish; and upon such declaration being made such poor law parish, or residue, shall thereafter be a highway parish entitled to return a waywarden or waywardens to the Highway Board of the district in which it is included; and no rate shall be separately levied for the maintenance of the highways, and no separate waywardens be elected in any such township, &c. (*y*)

Where, previously to the passing of the provisional order forming a highway district, no surveyors or waywardens have been elected within any highway parish in that district, and where the mode of electing a waywarden or waywardens in such parish is not provided by the "Highway Acts, 1862 or 1864," the justices shall, by their provisional and final orders constituting the district, or by any subsequent provisional and final orders, make provisions for the annual election of a waywarden or waywardens for such parish. (*z*)

Where a parish or place separately maintaining its own highways is situate partly within and partly without the

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(*w*) 25 & 26 Vict. c. 61, s. 7.

(*y*) Ibid. s. 7.

(*x*) 27 & 28 Vict. c. 101, s. 7.

(*z*) Ibid. s. 7.

limits of a borough, the justices may by their provisional and final orders include in a highway district the outlying part of such parish or place; and where the outlying part of a parish or place so situate has been, or may be hereafter, included in a highway district, each part of such parish or place shall for all the purposes of the Highway Acts be deemed to be a place separately maintaining its own highways; and a waywarden or waywardens shall be elected by the ratepayers in each such part at such time and in such manner as may be provided by the justices. (a)

*Legal Objections to Formation of District.*

No objection shall be made at any trial or in any legal proceeding to the validity of any orders or proceedings relating to the formation of a highway district, after the expiration of three calendar months from the date of the publication in the *Gazette* of the order under which the district is formed; and the production of a copy of the *London Gazette*, containing a copy of the order of justices forming the district, shall be receivable in all courts of justice, and in all legal proceedings, as evidence of the formation of the district and of the matters in the order mentioned. (b) But see 27 & 28 Vict. c. 101, s. 12, *ante*, pp. 3, 4.

*Validity of Order of Justices.*

No order of justices forming a highway district shall be void by reason that it includes in the district a place which the justices are not entitled to include in the district; and any order containing such prohibited place shall be construed and take effect as if that place had not been mentioned therein.

All expenses properly incurred by the justices of any county in maintaining the validity of any provisional or final order made by them shall be payable out of the county rate of that county. (c)

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(a) 27 & 28 Vict. c. 101, s. 8.

(b) 25 & 26 Vict. c. 61, s. 8.

(c) 27 & 28 Vict. c. 101, s. 16.

## 2. CONSEQUENCES OF FORMATION OF HIGHWAY DISTRICT.

*[Transfer of Property, Powers, &c.]*

At and after the first meeting of the Highway Board the following consequences shall ensue:—

All such property, real and personal, including all interests, easements, and rights in, to, and out of property, real and personal, and including things in action, as belong to or are vested in, or would but for the Act of 1862 have belonged to or been vested in, any surveyor or surveyors of any parish forming part of the district, shall pass to and vest in the Highway Board of the district for all the estate and interest of such surveyor or surveyors, but subject to all debts and liabilities affecting the same:

All debts and liabilities incurred in respect of any property transferred to the Highway Board may be enforced against the Board to the extent of the property transferred:

All such powers, rights, duties, liabilities, capacities, and incapacities (except the power of making, assessing, and levying highway rates), as are vested in or attached to, or would but for the Act have become vested in or attached to, any surveyor or surveyors of any parish forming part of the district, shall vest in and attach to the Highway Board:

All property by the Act transferred to the Board shall be held by them upon trust for the several parishes or places maintaining their own highways within their district to which such property belongs, or for the benefit of which it was held previously to the formation of the district. (d)

A similar transfer of property, powers, &c., to the rural sanitary authority of the district takes place from and after the commencement of an order of the county authority declaring the rural sanitary authority entitled to exercise the powers of a Highway Board within their district. (e)

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(d) 25 & 26 Vict. c. 61, s. 11.

(e) 41 & 42 Vict. c. 77. s. 5 (1).

## 3. THE HIGHWAY BOARD.

*Constitution of Highway Board.*

The Highway Board shall consist of the waywardens elected in the several places within the district, in manner hereafter mentioned, and of the justices acting for the county and residing within the district. (*f*)

A justice of the peace acting for the county in which a highway district is situate, if he is resident in any place which is prohibited either altogether or without the consent of the local authority from being included in a highway district by the seventh section of the "Highway Act of 1862," and which is surrounded by or adjoins in any part such highway district, shall, by virtue of his office, be a member of the Highway Board of such district, subject to this qualification, that if any justice of the peace would be so entitled to be a member of two or more Highway Boards in the same county, he shall, by letter under his hand, addressed to the Clerk of the Highway Board for which he elects to act, and by him to be transmitted to the Clerk of the Peace of the county, declare of which of the Highway Boards he elects to be a member, and having made that election he shall be bound thereby, and shall not be entitled by virtue of his office of justice to be a member of any other of the said Boards. (*g*)

The Board shall be a body corporate, by the name of the Highway Board of the district to which it belongs, having a perpetual succession and a common seal, with power to acquire and hold lands for the purposes of the Highway Acts, without any licence in mortmain. (*h*)

No act or proceeding of the Board shall be questioned on account of any vacancy or vacancies in their body; and no defect in the qualification or election of any person or persons acting as member or members of the Board or Committee of a Board shall vitiate any proceedings of the Board in which he or they have taken part, in cases where the majority of members parties to the proceedings are duly entitled to act. (*i*)

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(*f*) 25 & 26 Vict. c. 61, s. 9.

(*h*) 25 & 26 Vict. c. 61, s. 9.

(*g*) 27 & 28 Vict. c. 101, s. 29.

(*i*) *Ibid.* s. 9.

*Rural Sanitary Authority of District coincident with Highway District may become Highway Board.*

Where a highway district is or becomes coincident in area with a rural sanitary district, the rural sanitary authority of such district may apply to the county authority, stating that they are desirous to exercise the powers of a Highway Board under the Highway Acts within their district. And on such application the county authority may, if they see fit, by order declare that from and after a day to be named in the order (called the commencement of the order) such rural sanitary authority shall exercise all the powers of a Highway Board under the Highway Acts; and as from the commencement of the order the existing Highway Board (if any) for the district shall be dissolved, and waywardens or surveyors shall not hold office or be elected for any parish in the district. The order may be amended, altered, or rescinded by a subsequent order of the county authority.

Where a highway district, being coincident in area with a rural sanitary district, is situate in more than one county, the order may be made by the county authority of any county in which any part of such district is situate, but such order, and any order amending, altering, or rescinding the same, shall not be of any force or effect until it has been approved by the county authority or authorities of the other county or counties in which any part of such district is situate. (j)

*Consequences of Rural Sanitary Authority becoming Highway Board.*

From and after the commencement of the order declaring a rural sanitary authority entitled to exercise the powers of a Highway Board within their district, the following consequences shall ensue:—

All such property, real or personal, including all interests easements and rights in to and out of property real and personal and including things in action,



as belongs to or is vested in or would but for such order have belonged to or been vested in the Highway Board, or any surveyor or surveyors of any parish forming part of the district, shall pass to and vest in the rural sanitary authority for all the estate and interest of the Highway Board, or of such surveyor or surveyors, but subject to all debts and liabilities affecting the same :

All debts and liabilities incurred in respect of any property transferred to the rural sanitary authority may be enforced against that authority to the extent of the property transferred :

All such powers, rights, duties, liabilities, capacities and incapacities (except the power of obtaining payment of their expenses by the issue of precepts in manner provided by the Highway Acts, or the power of making, assessing, and levying highway rates) as are vested in or attached to or would but for such order have become vested in or attached to the Highway Board, or any surveyor or surveyors of any parish forming part of the district, shall vest in and attach to the rural sanitary authority :

All property so transferred to the rural sanitary authority shall be held by them on trust for the several parishes for the benefit of which it was held previously to such transfer. (*k*)

#### *Liability of Members of Board.*

No member of a Board, by being party to, or executing in his capacity of member, any contract or other instrument on behalf of the Board, or otherwise lawfully exercising any of the powers given to the Board, shall be subject to be tried or prosecuted, either individually or with others, by any person whomsoever ; and the bodies or goods or lands of the members shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, tried, or executed by them, or by reason of any other lawful act done by them

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(*k*) 41 & 42 Vict. c. 77, s. 5 (1).

in execution of any of the powers of the Board; and the members of the Board may apply any moneys in their hands for the purpose of indemnifying themselves against any losses, costs, or damages they may incur in execution of the powers granted to them. (*l*)

#### 4. PROCEEDINGS OF HIGHWAY BOARDS.

##### *Their Meetings.*

The Board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the Board, as they think fit, subject to the following conditions.

The first meeting after the formation of the district shall be held at the time and place fixed by the order of the justices in that behalf. (*m*) Though if any Highway Board make default in holding its first meeting, the Board shall not thereupon become disqualified from acting, but the justices in general or quarter sessions shall, on the application of any person liable to pay highway rates within the district, make such order as they think fit for the holding of the Board at some other time. Any order so made shall be deemed to be an order capable of being removed in the Queen's Bench Division of the High Court of Justice, in pursuance of the 12 and 13 Vict. c. 45, and may be enforced accordingly. The costs of any such application to the Court of Quarter Sessions shall be defrayed out of the district fund of the Board. (*n*)

One ordinary meeting shall be held in each period of four months, and of such meetings one shall be held on some day between the seventh and fourteenth days of April. An extraordinary meeting may be summoned at any time, on the requisition of three members of the Board, addressed to the Clerk of the Board. (*m*)

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(*l*) 25 & 26 Vict. c. 61, s. 9.

(*m*) 27 & 28 Vict. c. 101, s. 27 and sch. 1.

(*n*) 25 & 26 Vict. c. 61, s. 40.

*Quorum and Voting at Meetings.*

The quorum to be fixed by the Board shall consist of not less than three members. Every question shall be decided by a majority of votes of the members voting on that question. The names of the members present at a meeting shall be recorded. (o)

In case of an equality of votes at any meeting the chairman for the time being of such meeting shall have a second or casting vote. (o)

*Chairman and Vice-Chairman.*

The Board shall at the first meeting, and afterwards from time to time at their first meeting after each annual appointment of members of the Board as hereafter mentioned, appoint one of their members to be chairman and one other of their members to be a vice-chairman for the year following such choice. (o)

If any casual vacancy occur in the office of chairman or vice-chairman, the Board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some member of their number to fill such vacancy; and every such chairman or vice-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened. (o)

If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting; and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be a chairman of such meeting. (o)

*Orders and Precepts of Board.*

All orders of the Board for payment of money, and all precepts issued by the Board, shall be deemed to be duly executed if signed by two or more members of the Board

authorized to sign them by a resolution of the Board, and countersigned by the Clerk; but it shall not be necessary in any legal proceeding to prove that the members signing any such order or precept were authorized to sign them, and such authority shall be presumed until the contrary is proved. (p)

*Summonses and Notices.*

Any summons or notice, or any writ or any proceeding, at law or in equity, requiring to be served upon the Board, may be served by the same being left at or transmitted through the post in a prepaid letter directed to the office of the Board, or being given personally to the district surveyor or Clerk of the Board. (q)

Any notice in respect of which no other mode of service is provided by the Highway Board in pursuance of powers in that behalf conferred on them, and any precept, summons, or order issued by the Board, may be served,—By delivery of the same personally on the party required to be served; or, by leaving the same at the usual or last known place of abode of such party as aforesaid; or, by forwarding the same by post as a prepaid letter addressed to the usual or last known place of abode of such party.

In proving service of a document by post it shall be sufficient to prove that the document was properly directed, and that it was put as a prepaid letter into the post-office; and in serving notice on the overseers or the waywardens (if more than one) of any parish it shall be sufficient to serve the same on any one of such officers in a parish. (r)

*Minutes of Proceedings of Board to be received in Evidence.*

Any minute made of proceedings at meetings of the Board or of Committees of the Board, if signed by any person purporting to be the chairman of the Board or Committee, either at the meeting of the Board or Committee of the Board at which the proceedings took place, or at the next ensuing meeting of the Board or Committee, shall be receivable in evidence in all legal proceedings

(p) 27 & 28 Vict. c. 101, s. 27 and sch. 1. (q) 25 & 26 Vict. c. 61, s. 42.

(r) 27 & 28 Vict. c. 101, s. 26.

without further proof; and until the contrary is proved every meeting of the Board or Committee in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified. (s)

## 5. ELECTION OF WAYWARDENS.

### *Annual Election.*

In every parish forming part of a highway district, which is not a rural sanitary district of which the sanitary authority have become the Highway Board, there shall be elected every year for the year next ensuing a waywarden, or such number of waywardens as may be determined by order of the justices (t); and waywardens shall continue in office till the 30th April in the year following the year in which they were elected, and on that day their successors shall come into office. (u) A waywarden shall be re-eligible. (t)

Such waywarden or waywardens shall be elected in every parish forming part of a highway district at the meeting and time and in the manner and subject to the same qualification and the same power of appointment in the justices in the event of no election taking place, or in the event of a vacancy, at, in, and subject to which a person or persons to serve the office of surveyor would have been chosen or appointed under the 5 & 6 Wm. IV. c. 50, if this Act had not passed. (t)

The justices shall in their provisional order make provision for the election of a waywarden or waywardens in places where no surveyor or surveyors were elected previously to the place forming part of a highway district. (t)

### *Certificate as to Election.*

Every waywarden, before taking his seat as a member of a Highway Board, shall produce a certificate of his having been duly elected or appointed a waywarden, and such certificate shall, in the case of an elected waywarden, be signed by the chairman of the vestry or other meeting

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(s) 25 & 26 Vict. c. 61, s. 9.

(t) 25 & 26 Vict. c. 61, s. 10; and 41 & 42 Vict. c. 77, s. 4.

(u) 41 & 42 Vict. c. 77, s. 11.

at which he was elected; and in the case of a waywarden appointed by justices, be signed by the justices making the appointment. (v)

*Vote of Waywarden.*

A waywarden may sit as such for more places than one, but he shall be entitled to one vote only as waywarden. (w)

## 6. APPOINTMENT AND DUTIES OF OFFICERS.

*Clerk, Treasurer, and Surveyors.*

The Highway Board shall, at their first meeting or at some adjournment thereof, by writing under their seal, or by a minute of the Board signed by the chairman and countersigned by the Clerk of the Board (27 & 28 Vict. c. 101, s. 30), appoint a treasurer, clerk, and district surveyor; they may also at any meeting, if they think fit, appoint an assistant surveyor; and they may from time to time remove any of such officers, and appoint others in the room of such as may be so removed, or as may die or resign; they may also, out of any moneys in their hands, pay such salaries as they think reasonable to the clerk, and district and assistant surveyor, and to the treasurer, if they think necessary. Before the treasurer enters upon his office the Board shall take sufficient security from him for the due performance of the duties of his office. No appointment, however, except the first, to any of the offices above specified shall be made unless notice in writing has been sent to every member of the Board. (x)

Any two or more Highway Boards may unite in appointing and paying the salary of a district surveyor, who shall in relation to the district of each of the Boards by whom he is appointed have all the powers and duties of a district surveyor under the Highway Acts. (y)

If the Highway Board make default in appointing a treasurer, clerk, and district surveyor, or any of such officers, in pursuance of the "Highway Act, 1862," within three months after the day fixed by the justices for the holding of the first meeting of the Board, or within three

(v) 27 & 28 Vict. c. 101, s. 19.

(x) 25 & 26 Vict. c. 61, s. 12.

(w) Ibid. s. 19.

(y) 41 & 42 Vict. c. 77, s. 6.

months after a vacancy occurring in any of the offices, the justices in general or quarter sessions assembled may, if they think fit, appoint a person to any of the offices in respect of which the default has been made, and may fix the salary to be paid to the officer appointed; and any such appointment shall take effect and salary be recoverable in the same manner as if the officer appointed by the justices had been appointed by the Highway Board of the district; and it shall not be lawful for such Board, without the consent of the said justices, to remove any officer appointed by them under this section, or to lessen his salary, within one year from the date of his appointment. (z)

*Two Offices not to be held by the same Person.*

Not more than one office of treasurer, clerk, and district or assistant surveyor of the same Highway Board shall be held by the same person, or by persons in partnership with each other, or by persons in the relation of employer and clerk, agent, or servant, one of the other, or of the partner of either of them; and if any person so accepts or holds the office of treasurer, clerk, or district or assistant surveyor, he shall be liable to a penalty not exceeding fifty pounds. (a)

*Duties of Treasurer.*

The treasurer shall receive, and hold to the account of the Board, all moneys paid to or for the use of the Board, and shall make payments thereout under orders of the Board, and shall once in every three months, on or at such days or times as the Board may direct, or oftener if required by the Board, make up an account of all the moneys received and paid by him, and deliver the same to the Clerk of the Board. (b)

*Duties of Clerk.*

The clerk shall in person, or by such deputy as may be allowed by the Board, attend all meetings of the Board, and shall conduct their correspondence, and enter and keep, in books to be provided for the purpose, notes, minutes, or

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(z) 27 & 28 Vict. c. 101, s. 45.

(a) 25 & 26 Vict. c. 61, s. 13.

(b) Ibid. s. 14.

copies, as the case may require, of the meetings, acts, orders, resolutions, proceedings, and correspondence of the Board, and shall keep all books, papers, and documents committed to his charge, and shall perform all such other duties as the Board may direct. (c)

### *Duties of District Surveyor.*

The district surveyor shall act as the agent of the Board in carrying into effect all the works and performing all the duties required by the Acts to be carried into effect or to be performed by the Board, and he shall in all respects conform to the orders of the Board in the execution of his duties; and the assistant surveyor, if any, shall perform such duties as the Board may require, under the direction of the district surveyor. (d)

Where two or more Highway Boards unite in appointing a district surveyor, such surveyor shall in relation to the district of each of the Boards by whom he is appointed, have all the powers and duties of a district surveyor under the Highway Acts. (e)

### *Exemption from Toll.*

No toll shall be demanded by virtue of any Act of Parliament on any turnpike road from the surveyor of a Highway Board when executing or proceeding to execute his duties as surveyor, and all the provisions applicable to the exemption in the 3 Geo. IV. c. 126, shall apply to the case of the exemption of the surveyor from toll. (f)

### *Outgoing Surveyors.*

On the formation of a highway district, the following regulations shall be enacted with respect to the surveyors and the Highway Board:—1. No surveyor shall be appointed under the principal Act for any parish within the district. 2. The outgoing surveyor of every parish within the district shall continue in office until seven days after the appointment of the district surveyor by the Highway

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(c) 25 & 26 Vict. c. 61, s. 15.

(e) 41 & 42 Vict. c. 77, s. 6.

(d) Ibid. s. 16.

(f) 25 & 26 Vict. c. 61, s. 37.



Board of the district of such outgoing surveyor, and no longer; and he may recover any highway rate made and then remaining unpaid, in the same manner as if the Acts had not been passed; and the money so recovered shall be applied, in the first place, in reimbursing any expenses incurred by him as surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction, and the surplus (if any) shall be paid by him to the treasurer of the Highway Board; and he shall be entitled to receive from the Highway Board any sum not exceeding five pounds, which on the allowance of his accounts shall be found to be due to him as surveyor after the collection and expenditure of the whole of the highway rate made in the parish during the last year. 3. The Highway Board shall, for all the purposes of the Highway Act, 1835, except that of levying highway rates, be deemed to be the successor in office of the surveyor of every parish within the district. (g)

*Officers of Highway Board to account.*

All officers appointed by the Highway Board shall, as often as required by them, render to them or to such persons as they appoint, a true, exact, and perfect account in writing under their hands, with the proper vouchers, of all moneys which they may to the time of rendering their accounts have received and disbursed on account or by reason of their respective offices. In case any money so received by any officer remains in his hands, it shall be paid to the Board, or to such person or persons as they in writing under their hands empower to receive it; and if any officer refuses or wilfully neglects to render and give such account, or to deliver up the vouchers, or for the space of fourteen days after being required by the Board to do so refuses or wilfully neglects to give up to them or to such person or persons as they appoint all books, papers, writings, tools, and things in his hands, custody, or power relating to the execution of his office, any justice of the peace for the county where the officer making default is or resides, upon application made to him for that purpose by

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(g) 25 & 26 Vict. c. 61, s. 43; and 27 & 28 Vict. c. 101, s. 28.

or on behalf of the Board, may make inquiry of and concerning the default in a summary way, and by warrant under his hand and seal cause such money as may appear to be due and unpaid to be levied by distress and sale of the goods and chattels of the officer, rendering to him the overplus (if any) on demand, after payment of the money remaining due, and deducting the charges and expenses of making the distress and sale. If sufficient distress cannot be found, or if it appears that the officer has refused or wilfully neglected to give an account, or to deliver up all books, papers, writings, tools, matters, and things in his custody or power relating to the execution of his office, the justice shall commit him to the house of correction or common gaol, there to remain without bail until he gives a true and perfect account duly verified, and produces and delivers up the vouchers relating to it, and pays the money (if any) remaining in his hands according to the direction of the Board, or has compounded with the Board and paid the composition (which composition the Board are empowered to make and receive), or until he delivers up the books, papers, and writings, tools, matters, and things, or has given satisfaction to the Board concerning them. No officer who may be committed on account of his not having sufficient goods and chattels as aforesaid shall, however, be detained in prison by virtue of the Act for any longer time than six calendar months. (h)

## 7. MAINTENANCE OF HIGHWAYS.

### *Repair of Highways by Highway Board.*

The Highway Board shall maintain in good repair the highways within their district, and shall, subject to the provisions of the Acts, as respects the highways in each parish within their district, perform the same duties, have the same powers, and be liable to the same legal proceedings as the surveyor of the parish would have performed, had, and been liable to if the Acts had not passed. It shall be the duty of the district surveyor to submit to the Board at their first meeting in every year an estimate of

the expenses likely to be incurred during the ensuing year for maintaining and keeping in repair the highways in each parish within the district of the Board, and to deliver a copy of such estimate as approved or modified by the Board so far as the same relates to each parish to the waywarden thereof. (i)

The Highway Board may and is authorized to contract for purchasing, getting, and carrying the materials required for the repair of the highways, and for maintaining and keeping in repair all or any part of the highways of any parish within their highway district, for any period not exceeding three years. (j)

*Contracts by Waywardens.*

By 26 & 27 Vict. c. 61, s. 1, no waywarden shall directly or indirectly contract for the repair of any roads, or for any other work to be executed under the provisions of the 25 & 26 Vict. c. 61 within the parish for which he is elected waywarden, or within any other parish in the same district, under a penalty of ten pounds with full costs of suit; and by section two of the same Act the Highway Board are not liable to pay for any work so contracted for. But now by 27 & 28 Vict. c. 101, s. 20, notwithstanding anything contained in the 25 & 26 Vict. c. 61, or in any other Act, any waywarden may contract for the supply or cartage of materials within the parish for which he is waywarden, with the licence of two justices assembled at petty sessions, such licence to be granted on the application of the Clerk of the Highway Board, who must be authorized to make such application by a resolution of his Board assembled at a meeting of which notice has been given.

*Power of County Authority to enforce performance of duty by defaulting Highway Authority.*

Where complaint is made to the county authority that the highway authority of any highway area within their jurisdiction (that is, a Highway Board, surveyor of high-

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(i) 25 & 26 Vict. c. 61, s. 17.

(j) 27 & 28 Vict. c. 101, s. 52.

ways, or urban sanitary authority of any district other than a borough with separate quarter sessions) has made default in maintaining or repairing all or any of the highways within their jurisdiction, the county authority, if satisfied after due inquiry and report by their surveyor that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of the duty of the highway authority; and if such duty is not performed by the time limited in the order, and the highway authority fail to show sufficient cause why the order has not been complied with, the county authority may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with the reasonable remuneration of the person appointed for superintending such performance, shall be paid by the authority in default, and any order made for payment of such expenses and costs may be removed into the High Court of Justice, and be enforced in the same manner as if the same were an order of such court.

Any person so appointed shall, in the performance and for the purpose of the duty of the highway authority, be invested with all the powers of such authority other than the powers of making rates or levying contributions by precept. The person appointed may be changed by order of the county authority.

If the highway authority, within ten days after service on them of the order of the county authority, give notice to the clerk of the peace that they decline to comply with the requisitions of the order until their liability to repair the highway in respect to which they are alleged to have made default has been determined by a jury, it shall be the duty of the county authority either to satisfy the defaulting authority by cancelling the order or modifying it in such manner as the authority may desire, or else to submit to a jury the question of the liability of the defaulting authority to repair the highway.

If the county authority decide to submit the question to a jury, they shall direct a bill of indictment to be preferred to the next practicable assizes to be holden in and for their county, with a view to try the liability of the defaulting authority to repair the highway. Until the trial of the indictment is concluded the order of the

county authority shall be suspended, and if the jury acquit the defendants it shall become void.

The costs of the indictment and of the proceedings consequent thereon shall be paid by such parties to the proceedings as the court before whom the case is tried may direct. Any costs directed to be paid by the county authority shall be paid out of the county rate, and any costs directed to be paid by the highway authority shall be paid out of the funds applicable to the maintenance of the roads within their jurisdiction. (*k*)

### *Roads out of Repair.*

Where complaint is made to any justice of the peace that any highway within the jurisdiction of the Highway Board is out of repair, the justice shall issue two summonses, the one addressed to the Highway Board and the other to the waywarden of the parish liable to the repair of the highway, requiring the Board and waywarden to appear before the justices at some petty sessions, in the summons mentioned, to be held in the division where the highway is situate. At such petty sessions, unless the Board undertake to repair the road to the satisfaction of the justices, or unless the waywarden deny the liability of the parish to repair, the justices shall direct the Board to appear at some subsequent petty sessions to be then named, and shall either appoint some competent person to view the highway, and report to them on its state at such other petty sessions, or fix a day, previous to such petty sessions, at which two or more of them will themselves attend to view the highway. At the last-mentioned petty sessions, if the justices are satisfied, either by the report of the person they appointed, or by their own view, that the highway complained of is not in a state of complete repair, it shall be their duty to make an order on the Board limiting a time for the repair of the highway complained of. If the highway is not put in complete and effectual repair by the time limited in the order, the justices in petty sessions shall appoint some person to put the highway into repair, and shall by order direct that

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(*k*) 41 & 42 Vict. c. 77, s. 10.

the expenses of making the repairs, together with a reasonable remuneration to the person appointed for superintending the repairs, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the Board. Any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, in the same manner as if it were an order of general or quarter sessions, and be enforced accordingly. (l)

All expenses directed to be paid by the Board in respect of the repairs of any highway shall be deemed to be expenses incurred by the Board in repairing the highway, and shall be recovered accordingly. (l)

*Appearance of Highway Board before Justices.*

The Highway Board may appear before the justices at petty sessions by their district surveyor or clerk, or any member of the Board. (l)

*How, when obligation to Repair is disputed.*

When, on the hearing of any summons respecting the repair of any highway, the liability to repair is denied by the waywarden on behalf of his parish, or by any party charged therewith, the justices shall direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpoenaed, at the next assizes to be holden in and for the county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein the highway is situate, against the inhabitants of the parish, or the party charged therewith, for suffering and permitting the highway to be out of repair. The costs of such prosecution shall be paid by such party to the proceedings as the court before whom the case is tried shall direct, and if directed to be paid by the parish shall be deemed to be expenses incurred by the parish in keeping its highways in repair, and shall be paid accordingly. (m)

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(l) 25 & 26 Vict. c. 61, s. 18.

(m) Ibid. s. 19.

*Recovery of Expenses of Repair of Highways repairable ratione tenuræ, &c.*

Where any highway which any body politic or corporate or person is liable to repair by reason of tenure of any land, or otherwise howsoever, shall be adjudged in the manner provided by the "Highway Act, 1862," (n) to be out of repair, the Highway Board of the district in which it is situate may, if they see fit, direct their surveyor to repair it, and the expenses to be incurred in the repair shall be paid by the person liable to do the repairs; and any justice, upon the application of any person authorized in that behalf by the Highway Board, may summon the person liable to pay the expenses to appear before two justices, and upon the appearance of the parties, or in the absence of either of them, the justices may hear and determine the matter, and make such order, as well as to costs or otherwise, as may seem just to them. (o)

*Highways repairable ratione tenuræ may be made repairable by the Parish.*

Where any person or corporation is liable, by reason of tenure of lands or otherwise, to repair any highway situate in any highway district, the person or corporation so liable, or the Highway Board, (p) may apply to any justice of the peace for the purpose of making the highway a highway to be repaired and maintained by the parish in which it is situated, who shall thereupon issue summonses requiring the waywarden of the parish, the district surveyor, and the person so liable to repair the highway, to appear before two or more justices in petty sessions assembled, who shall proceed to examine and determine the matter, and, if they think fit, make an order under their hands that the highway shall be a highway to be thereafter repaired and maintained by the parish, and fix a certain sum to be paid by such person or corporation to the Highway Board of the district, in full discharge of all claims thereafter in respect of the repair and maintenance of the highway. In default of payment of such sum, the

(n) 27 & 28 Vict. c. 101, s. 23.

(o) 25 & 26 Vict. c. 61, s. 34.

(p) 27 & 28 Vict. c. 101, s. 24.

Board may proceed for its recovery in the same manner as for the recovery of penalties or forfeitures.

When the sum so fixed to be paid in full discharge of all claims in respect of the repair and maintenance of the highway exceeds fifty pounds, it shall be invested in the name of the Highway Board of the district in some public Government securities, and the interest and dividends applied by the Board towards the repair and maintenance of the highways within the parish in which the highway is situated. When, however, the sum does not exceed fifty pounds, the same, or any part of it, at the discretion of such Highway Board, shall from time to time be applied by the Board towards the repair and maintenance of the highways within the parish. Any person aggrieved by any order of justices so made may appeal to a Court of General or Quarter Sessions holden within four months from the date of the order; but no appeal shall be entertained unless the appellant has given to the other party to the case a notice in writing of the appeal, and of the matter of it, within fourteen days after the order, and seven clear days at the least before the sessions, and has entered into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned to appear at the sessions, and to try the appeal, and abide the judgment of the court, and pay such costs as may be awarded. Upon the notice of appeal being given, and the recognizance being entered into, the court shall hear and determine the matter of the appeal, and make such order, with or without costs to either party, as to the court may seem meet. From and after the making of the order by the justices, or by the court on appeal, as the case may require, the highway shall be repaired in like manner and at the like expense as highways which a parish is liable to repair. (q)

*Driftways, Private Carriage or Occupation Roads.*

Where the inhabitants of any parish are desirous of undertaking the repair and maintenance of any driftway, or any private carriage or occupation road, within their parish, in return for the use thereof, the district surveyor may, at the request of the inhabitants of the parish as-



sembled in a vestry duly convened for the purpose, and with the consent in writing of the owner and the occupier of every part thereof, apply to the justices in petty sessions to declare the driftway or road to be a public highway to be repaired at the expense of the parish; and upon such application the justices may declare the way or road to be a public carriage road to be repaired at the expense of the parish. (r)

### *Adoption of Roads by Councils of Boroughs.*

There are in certain boroughs in England and Wales roads and highways that are now and have heretofore been repaired by the inhabitants of the several parishes or townships within which they are situated, and who also contribute and pay to the general rates levied for the repair of the public streets, roads, and highways maintained and kept in repair by the council of such boroughs, and a great burthen is thereby imposed upon the ratepayers of these parishes and townships. It being doubtful whether the council of such boroughs have the power to adopt such parish roads and highways, or to apply the rates collected in such boroughs in repairing them; it is enacted, That the council of every such borough in England and Wales, upon the petition of the majority of the ratepayers of such parishes or townships present at a public meeting duly convened, may adopt all or any of such parish roads and highways as the council shall in its discretion consider advisable, and apply the rates levied and collected by the council for the repair of the public streets, roads, and highways within the borough in repairing and maintaining such parish roads and highways. It is, however, competent for such council, previous to adopting such parish roads and highways, to require the provisions contained in any local Act applying to the public streets, roads, and highways of the borough to be complied with. (s)

### *Discontinuance of unnecessary Highways.*

If any authority liable to keep any highway in repair is of opinion that so much of such highway as lies within

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(r) 25 & 26 Vict. c. 61, s. 36.

(s) Ibid. s. 45.

any parish situate in a petty sessional division is unnecessary for public use, and therefore ought not to be maintained at the public expense, such authority may apply to the court of summary jurisdiction of such petty sessional division to view by two or more justices being members of the court, the highway to which such application relates, and on such view being had, if the court of summary jurisdiction is of opinion that the application ought to be proceeded with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such highway, and by public notice, appoint a time and place, not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such highway being declared unnecessary for public use, and not repairable at the expense of the public.

On the day and at the place appointed, the court shall hear any persons objecting to an order being made by the court that such highway is unnecessary for public use and ought not to be repairable at the public expense, and shall make an order either dismissing the application or declaring such highway unnecessary for public use, and that it ought not to be repaired at the public expense.

If the court make such last-mentioned order as aforesaid, the expenses of repairing such highway shall cease to be defrayed out of any public rate.

Public notice of the time and place appointed for the hearing shall be given by the applicant authority by advertising a notice of the time and place appointed for the hearing and the object of the hearing, with a description of the highway to which it refers in some local newspaper circulating in the district in which such highway is situate once at least in each of the four weeks preceding the hearing, and by causing a copy of such notice to be affixed at least fourteen days before the hearing to the principal doors of every church and chapel in the parish in which such highway is situate, or in some conspicuous position near such highway. And the application shall not be entertained by the court until the fact of such public notice having been given is proved to its satisfaction.

If at any time after the order has been made upon

application of any person interested in the maintenance of the highway in respect of which such order has been made, after one month's previous notice in writing thereof to the applicant authority, it appears to the court of quarter sessions that from any change of circumstances since the time of the making of the order the highway has become of public use, and ought to be maintained at the public expense, the court of quarter sessions may direct that the liability of such highway to be maintained at the public expense shall revive from and after such day as they may name in their order, and such highway shall thenceforth be maintained out of the rate applicable to payment of the expenses of repairing other highways repairable by the applicant authority; and the said court of quarter sessions may by their order direct the expenses of and incident to such application to be paid as they may see fit.

Any order of a court of summary jurisdiction under this section shall be deemed to be an order from which an appeal lies to a court of quarter sessions. (*t*)

Under the Highway Act, 1864, when any Highway Board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as where application is made under the "Highway Act, 1835," to procure the stopping up of any highway, save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair, and the liability of the parish shall cease accordingly; for the purpose of such proceedings, such variation shall be made in any notice, certificate, or other matter preliminary to the making of such order as the nature of the case may require: Provided, that if at any time thereafter, upon application of any person interested in the maintenance of such highway, after one month's previous notice in writing thereof to the clerk of the Highway Board for the district in which such highway is situated, it appear to any court of general or quarter sessions of the peace that from any change of

circumstances since the time of the making of any such order under which the liability of the parish to repair such highway has ceased the same has become of public use, and ought to be kept in repair by the parish, they may direct that the liability of the parish to repair the same shall revive from and after such day as they may name in their order, and such liability shall revive accordingly as if the first-mentioned order had not been made; and the court may by their order direct the expenses of and incident to such application to be paid as they may see fit. (u)

### *Main Roads.*

One half of the expenses incurred by any highway authority in the maintenance of any main road within their highway area shall be paid to them by the county authority of the county in which such road is situate, out of the county rate. (v)

Any road which has since the 31st December, 1870, ceased to be a turnpike road, and any road which being a turnpike road may hereafter cease to be such, shall be deemed to be a main road. (w) Where a turnpike road subject to one trust extends into divers counties, it shall be treated as a separate turnpike road in each county through which it passes. (x)

Where it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such highway authority may apply to the county authority for an order declaring such road, as to such parts as aforesaid, to be a main road; and the county authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and, if satisfied that it ought to be a main road, shall make an order accordingly. A copy of the order so made shall be forthwith deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours; and the order

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(u) 27 & 28 Vict. c. 101, s. 21.

(v) Ibid.

(w) 41 & 42 Vict. c. 77, s. 13.

(x) Ibid. s. 17.

so made shall not be of any validity unless and until it is confirmed by a further order of the county authority made within a period of not more than six months after the making of the first-mentioned order. (y)

If it appears to a county authority that any road within their county which within the period between the 31st December, 1870, and the 16th August, 1878, ceased to be a turnpike road, ought not to become a main road, such authority shall, before the 1st February, 1879, make an application to the Local Government Board for a provisional order declaring that such road ought not to become a main road. Where it appears to a county authority that any road within their county which has become a main road ought to cease to be a main road and become an ordinary highway, such authority may apply to the Local Government Board for a provisional order declaring that such road has ceased to be a main road and become an ordinary highway.

The Local Government Board, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and, if satisfied that it ought not to become or ought to cease to be a main road and become an ordinary highway, shall make an order accordingly. (z)

The Local Government Board may submit any such provisional order made by them to Parliament for confirmation, and without such confirmation a provisional order shall not be of any validity. (a)

All expenses incurred in or incidental to the making or confirmation of the provisional order shall be defrayed by the county authority applying for such order. (b)

### *Roads over Bridges.*

The Highway Board of any district may from time to time contract for any time not exceeding three years with any person or body of persons, corporate or unincorporate, to repair any highways, turnpike roads, or roads over county or other bridges, or any part thereof, for the repairing of which such persons or body of persons are liable; and any persons or body of persons liable to repair any roads may

(y) 41 & 42 Vict. c. 77, s. 15.

(z) Ibid. s. 16.

(a) Ibid. s. 34.

(b) Ibid. s. 16.

contract with the Highway Board for the repairing any highways, inclusive as aforesaid, or any part thereof, which the Highway Board is liable to make or repair; and the money payable under any contract made in pursuance of this section shall be raised in the same manner and be paid out of the same rates as would have been applicable to defray the expenses of the repair of such highways if no contract had been made in respect thereto. (c)

Any bridge erected before the 16th August, 1878, in any county without such superintendence as is provided in section five of the statute of the forty-third year of King George the Third, chapter fifty-nine, and which is certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair. (d)

The county authority may make such contribution as it sees fit out of the county rates towards the cost of any bridge to be hereafter erected, after the same has been certified in accordance with the provisions of section five of the statute of the forty-third year of King George the Third, chapter fifty-nine, as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one half the cost of erecting such bridge. (e)

### *Improvements to Highways.*

A Highway Board may make any of the following improvements in the highways within their jurisdiction:—

1. The conversion of any road that has not been stoned into a stoned road :
2. The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges :

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(c) 27 & 28 Vict. c. 101, s. 22.

(d) 41 & 42 Vict. c. 77, s. 21.

(e) Ibid. s. 22.

3. The doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair : (f)
4. The abolition of tolls on turnpike roads. (g)

*Contributions towards Improvements in other Parishes or Districts.*

Any parish may, with the consent of its waywarden, contribute to any improvements made in another parish, whether situate or not, in the same district, if such first-mentioned parish consider such improvements to be for its benefit; and any Highway Board may contribute to any improvements made in another district if such improvements are, in the opinion of the Highway Board of the first-mentioned district, for the benefit of their district. The contribution to be made by one parish to another shall be payable in the same manner as if such contributions were moneys due from the contributing parish in respect of expenses incurred in keeping in repair the highways of that parish, and moneys contributed by one district to another district shall be payable out of the common fund of the contributing district. (h)

*Purchase of Lands.*

A Highway Board for the purpose of improving the highways within their district may purchase such lands or easements relating to lands as they may require; and "The Lands Clauses Consolidation Act, 1845," and the Act amending the same are incorporated, with the exception of the clauses relating to the purchase of land otherwise than by agreement. (i)

18. MISCELLANEOUS PROVISIONS AS TO HIGHWAYS.

*Bye-laws by County Authority.*

A county authority may from time to time make, with respect to all or any main roads or other highways within

(f) 27 & 28 Vict. c. 101, s. 48.

(g) 35 & 36 Vict. c. 85, s. 15.

(h) 27 & 28 Vict. c. 101, s. 49.

(i) Ibid. s. 53.

any highway area in their county, and when made alter or repeal, bye-laws for all or any of the purposes following, that is to say:

1. For prohibiting or regulating the use of any waggon, wain, cart, or carriage drawn by animal power, and having wheels of which the fellys or tires are not of such width in proportion to the weight carried by, or to the size of, or to the number of wheels of such waggon, wain, cart, or carriage, as may be specified in such bye-laws; and
2. For prohibiting or regulating the use of any waggon, wain, cart, or other carriage drawn by animal power not having the nails on its wheels countersunk in such manner as may be specified in such bye-laws, or having on its wheels bars or other projections forbidden by such bye-laws; and
3. For prohibiting or regulating the locking of the wheel of any waggon, wain, cart, or carriage drawn by animal power when descending a hill, unless there is placed at the bottom of such wheel during the whole time of its being locked a skidpan slipper or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel; and
4. For prohibiting or regulating the erection of gates across highways and prohibiting gates opening outwards on highways; and
5. For regulating the use of bicycles.

Fines, to be recovered summarily, may be imposed by any such bye-laws on persons breaking any bye-law made under this section, provided that no fine exceeds for any one offence the sum of two pounds, and that the bye-laws are so framed as to allow of the recovery of any sum less than the full amount of the fine. (*j*)

Any such bye-law, and any alteration made therein and any repeal of any such bye-law, shall not be of any validity until it has been submitted to and confirmed by the Local Government Board. And any such bye-law shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed until the expiration



of one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district. (*k*)

*Appointment of Surveyors in certain Parishes.*

In order to remove a doubt which had arisen whether a surveyor of highways could be appointed, in pursuance of the Highway Act, 1835, for a parish not maintaining any highway, it is enacted by the Act of 1878 that it shall be lawful for the inhabitants in vestry assembled of any parish or place having a known legal boundary (notwithstanding that the inhabitants at large are not for the time being liable to maintain any highway or to contribute to any rate applicable to the maintenance of highways), or on the neglect or refusal of such inhabitants for the justices at a special sessions for the highways or in petty sessions assembled, at any time to exercise all the powers of the Highway Acts with respect to the election or appointment of a surveyor of highways with or without a salary for such parish or place; and any surveyor so elected or appointed shall have all the powers and duties (including the power of making, assessing, and levying of highway rates) of a surveyor under the Highway Acts. (*l*)

*Highways under Local Acts.*

All the provisions of the Highway Act, 1835, for widening, diverting, and stopping up highways shall be applicable to all highways which now are or may hereafter be paved, repaired, or cleansed under or by virtue of any local or personal Act or Acts of Parliament, or which may be situate within the limits of any such Act or Acts, except highways which any railway company, or the owners, conservators, commissioners, trustees, or undertakers of any canal, river, or inland navigation, are liable by virtue of any Act of Parliament relating to such railway, canal, river, or inland navigation to make, maintain, repair, or cleanse. (*m*)

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(*k*) 41 & 42 Vict. c. 77, s. 35.

(*l*) Ibid. s. 25.

(*m*) 25 & 26 Vict. c. 61, s. 44.

*Erection of Fences by Owners of adjoining Lands.*

No person through whose land a highway passes, which is to be repaired by the parish, shall become liable for the repair of such highway by erecting fences between the highway and the adjoining land, if they are erected with the consent in writing of the Highway Board of the district within which the highway is situate in the case of a place within the jurisdiction of a Highway Board, and in the case of any other place with the consent of the surveyor or other authority having jurisdiction over the highway. (n)

*Encroachments on Highways.*

If any person shall encroach by making or causing to be made any building, or pit, or hedge, ditch or other fence, or by placing any dung, compost, or other materials for dressing land, or any rubbish, on the side or sides of any carriageway or cartway within fifteen feet of the centre thereof, or by removing any soil or turf from the side or sides of any carriageway or cartway, except for the purpose of improving the road, and by order of the Highway Board, or, where there is no Highway Board, of the surveyor, he shall be subject on conviction for every such offence to any sum not exceeding forty shillings, notwithstanding that the whole space of fifteen feet from the centre of such carriageway or cartway has not been maintained with stones or other materials used in forming highways; and it shall be lawful for the justices assembled at petty sessions, upon proof to them made upon oath, to levy the expenses of taking down such building, hedge, or fence, or filling up such ditch or pit, and removing such dung, compost, materials, or rubbish, or restoring the injury caused by the removal of such soil or turf, upon the person offending: Provided, that where any carriageway or cartway is fenced on both sides no encroachment shall be allowed whereby such carriageway or cartway shall be reduced in width to less than thirty feet between the fences on each side. (o)

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(n) 25 & 26 Vict. c. 61, s. 46.

(o) 27 & 28 Vict. c. 101, s. 51.

*Cattle found straying, &c., on Highways.*

If any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is at any time found straying on or lying about any highway, or across any part thereof, or by the sides thereof (except on such parts of any highway as pass over any common or waste or uninclosed ground), the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding five shillings, to be recovered in a summary manner, together with the reasonable expense of removing such animal from the highway where it is found to the fields or stable of the owner or owners, or to the common pound (if any) of the parish where the same shall be found, or to such other place as may have been provided for the purpose: Provided always, that no owner of any such animal shall in any case pay more than the sum of thirty shillings, to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorized keeper of the pound: any right of pasturage which may exist on the sides of any highway is not however to be interfered with. (p)

*Saving for Minerals under Disturnpiked Roads.*

Notwithstanding anything contained in section sixty-eight of the Public Health Act, 1848, or in section one hundred and forty-nine of the Public Health Act, 1875, all mines and minerals of any description whatsoever under any disturnpiked road or highway which has or shall become vested in an urban sanitary authority by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority, but so nevertheless that in such working and getting no damage shall be done to the road or highway. (q)

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(p) 27 & 28 Vict. c. 101, s. 25.

(q) 41 & 42 Vict. c. 77, s. 27.

provision extends to the Isle of Wight and  
as, as defined by the 23 & 24 Vict. c. 68.

### . EXPENSES OF HIGHWAY BOARDS.

#### *How to be Charged.*

The salaries of the officers appointed for each district and any other expenses incurred by any Highway Board, for the common use or benefit of the several parishes within such district, shall be annually charged to a district fund to be contributed by and charged upon the several highway parishes within such district in proportion to the rateable value of the property in each parish.

The rateable value of the property in each parish shall be ascertained according to the valuation list or other estimate for the time being in force in such parish for the purposes of the poor rate, or if no such valuation list or estimate be in force, then in such manner as may be determined by the justices in petty sessions, subject to an appeal by any person aggrieved to the next general or quarter sessions. (r)

Until the 25th March, 1879, the expenses incurred by any Highway Board which is not a rural sanitary authority invested with the powers of a Highway Board, in maintaining and keeping in repair the highways of each highway parish within the district, and all other expenses legally payable by the Highway Board in relation to such parish, including any sums of money that would have been payable out of the highway rates of such parish if the same had not become part of a highway district, except such expenses as are authorized to be charged to the district fund, shall be a separate charge on each parish. (r)

On and after the 25th March, 1879, all expenses incurred by any Highway Board in maintaining and keeping in repair the highways of each parish within their district, and all other expenses legally incurred by such board, shall be deemed to have been incurred for the common use or benefit of the several parishes within their district, and shall be charged on the district fund: Provided, that if a

Highway Board think it just, by reason of natural differences of soil or locality, or other exceptional circumstances, that any parish or parishes within their district should bear the expenses of maintaining its or their own highways, they may (with the approval of the county authority or authorities of the county or counties within which their district, or any part thereof, is situate) divide their district into two or more parts; and charge exclusively on each of such parts the expenses payable by such Highway Board in respect of maintaining and keeping in repair the highways situate in each such part; so, nevertheless, that each such part shall consist of one or more highway parish or highway parishes. (s)

*Expense of Maintenance of Main Roads.*

One half of the expenses incurred from and after the 29th September, 1878, by the highway authority of any highway area (that is, by the urban sanitary authority, the Highway Board, or the surveyor or surveyors, as the case may be), in the maintenance of any main road shall, as to every part thereof which is within the limits of the highway area, be paid to the highway authority by the county authority of the county in which such road is situate out of the county rate, on the certificate of the surveyor of the county authority or of such other person or persons as the county authority may appoint, to the effect that such main road has been maintained to his or their satisfaction. Such expenses are confined to the cost of repairs defrayed out of current rates, and do not include any repayment of principal money borrowed, or of interest payable thereon; and no part of such expenses shall be included in any precept or warrant for the levying or collection of county rate within the metropolis; or any order made on the council of any borough having a separate court of quarter sessions under 5 & 6 Wm. IV. c. 76, s. 117. (t)

Where a highway district is situate in more than one county, the above provisions, with respect to the expenses of the maintenance of main roads, shall apply as

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(s) 41 & 42 Vict. c. 77, s. 7.

(t) Ibid. s. 13.

if the portion of such district situate in each county were a separate highway district in that county. (u)

Where certain of the bridges within a county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority from time to time, by order, to declare any main road or part of a main road within their county to be repairable, to the extent and in manner provided by section 13, either by the county or by the hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a hundred; the expense of repairing the same shall, to the extent to which such expense or any contribution thereto would otherwise be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged. (v)

*Expenses of Rural Sanitary Authorities as Highways Boards.*

All expenses incurred by a rural sanitary authority in the performance of their duties as a Highway Board shall be deemed to be general expenses of such authority within the meaning of the Public Health Act, 1875. (w)

*Mode of raising contributions to general expenses of Rural Sanitary Authority.*

The general expenses of a rural sanitary authority under the Public Health Act, 1875, are payable out of a common fund to be raised out of the poor rate of the parishes in the district according to the rateable value of each contributory place. (x) For the purpose of obtaining payment from the several contributory places within their district of the sums to be contributed by them, the rural sanitary authority shall issue their precept to the overseers of each such contributory place requiring such overseers to pay,

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(u) 41 & 42 Vict. c. 77, s. 19. (v) Ibid. s. 20.  
 (w) Ibid. s. 5 (3). (x) 38 & 39 Vict. c. 55, s. 229.

within a time limited by the precept, the amount specified in such precept to the rural sanitary authority or to some person appointed by them. And the overseers shall comply with the requisitions of such precept by paying the contribution required in respect of general expenses out of the poor rate of their respective parishes.

Where a contribution for general expenses is required from a contributory place or part of a contributory place which is part of a parish, the overseers shall from time to time levy such increase of rate from the contributory place or such part thereof as may be sufficient to recoup the parish for the sum it has paid on account of the contributory place or part thereof in respect of general expenses, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor rate, or by a separate rate to be assessed, made, allowed, published, collected, and levied in the same manner as a poor rate. The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect any such separate rate, and receive out of it such remuneration for the additional duty as the overseers with the consent of the vestry may determine. (y) Any surplus from any such separate rate remaining in the hands of the overseers at the expiration of their term of office is to be paid over to the rural sanitary authority, and to go in reduction of the next call. (z)

*Remedy for nonpayment of amount required by Precept of Rural Sanitary Authority.*

If the amount required by any precept of a rural sanitary authority to be paid by the overseers of any parish is not paid in manner directed by such precept, and within the time therein specified, the rural sanitary authority shall have the like remedy for recovery from the overseers of such amount as is not paid as guardians have for the time being for recovery from overseers of contributions of parishes, and for that purpose the precept

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(y) 38 & 39 Vict. c. 55, s. 230.

(z) Ibid.

requiring the payment shall be conclusive evidence of the amount thereof. (a)

*Precepts of Highway Boards not being Rural Sanitary Authorities for payment of Money to Treasurer.*

For the purpose of obtaining payment from the several highway parishes within their district of the sums to be contributed by them, a Highway Board, which is not a Rural Sanitary Authority invested with the powers of a Highway Board, shall order precepts to be issued to the waywardens or overseers of the parishes, stating the sum to be contributed by each parish, and requiring the officer to whom the precept is addressed, within a time to be limited by the precept, to pay the sum therein mentioned to the treasurer of the Board. (b)

*In the case of a Highway Parish.*

Where a highway parish is not a parish separately maintaining its own poor, or where in any highway parish it has, for a period of not less than seven years immediately preceding the passing of the "Highway Act, 1862," been the custom of the surveyor of highways for such parish to levy a highway rate in respect of property not subject by law to be assessed to poor rates, the precept of the Highway Board (not being a rural sanitary authority) shall be addressed to the waywarden of the parish, and in all other cases it shall be addressed to the overseers. (c)

Where the precept is addressed to a waywarden he shall pay the sum thereby required out of a separate rate, and such separate rate shall, in the case of a parish in which for the period mentioned it has been the custom of the surveyor of highways to levy a highway rate in respect of property not subject by law to be assessed to poor rate, be assessed on and levied from the persons and in respect of the property on, from, and in respect of which the same has been assessed and levied during such period as aforesaid, and in all other cases such rate shall be assessed on

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(a) 38 & 39 Vict. c. 55, s. 231.

(b) 27 & 28 Vict. c. 101, s. 33.

(c) Ibid.



and levied from the persons and in respect of the property on, from, and in respect of which a poor rate would be assessable and leviable if the parish of which he is waywarden were a place separately maintaining its own poor. (d)

No rate leviable by a waywarden shall be payable until the same has been published in manner in which rates for the relief of the poor are by law required to be published. (d)

A waywarden shall account to the Highway Board for the amount of all rates levied by him, and at the expiration of his term of office shall pay any surplus in his hands arising from any rate so levied, above the amount for which the rate was made, to the treasurer of the Highway Board, to the credit of the parish within which such rate was made, and such surplus shall go in reduction of the next highway rate that may be leviable in such parish. (d)

#### *In the case of a Poor Law Parish.*

Where the precept of a Highway Board not being a rural sanitary authority is addressed to the overseers, they shall pay the sum thereby required out of a poor rate to be levied by them, or out of any moneys in their hands applicable to the relief of the poor. (d)

#### *Limitation of Amount to be Levied.*

No contribution required to be paid by any parish at any one time in respect of highway rates shall exceed the sum of tenpence in the pound, and the aggregate of contributions required to be paid by any parish in any one year in respect of highway rates shall not exceed the sum of two shillings and sixpence in the pound, except with the consent of four-fifths of the ratepayers of the parish in which such excess may be levied present at a meeting specially called for the purpose, of which ten days' previous notice has been given by the waywarden of such parish, and then only to such extent as may be determined by such meeting. (d)

*Charges on Rates.*

All sums of money payable in pursuance of the precepts of a Highway Board shall, whether they are or are not payable by the overseers of the poor, be subject to all charges to which ordinary highway rates are subject by law. (e)

*Power to levy Rates.*

All waywardens and overseers to whom precepts of a Highway Board are directed or authorized to be issued shall within their respective parishes have the same powers, remedies, and privileges, for and in respect of assessing and levying any rates required to be levied for making payments to a Highway Board, in the case of overseers, as they have in assessing and levying ordinary rates for the relief of the poor, and in the case of waywardens as they would have if the parish of which they are waywardens were a place separately maintaining its own poor, and they were overseers thereof, and the rate to be levied by them were a duly authorized poor rate. (f)

*Appeals against Rates.*

A right of appeal to special sessions against any rate levied for the purpose of raising moneys payable under a precept of a Highway Board is given by the Highway Act, 1864 (g); and a right of appeal to quarter sessions from any rate made under the provisions of the Public Health Act, 1875, is given by s. 269 of that Act. (h)

*Mode of enforcing Payments to Highway Boards  
not being Rural Sanitary Authorities.*

If any payment required to be made by the overseers or waywardens of any parish of moneys due to a Highway Board, which is not a rural sanitary authority invested with the powers of a Highway Board, is in arrear, any

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(e) 27 & 28 Vict. c. 101, s. 33.

(f) Ibid. s. 34; see also 38 & 39 Vict. c. 55, s. 230.

(g) 27 & 28 Vict. c. 101, s. 37. (h) 38 & 39 Vict. c. 55, s. 269.

justice, on application under the hand of the chairman for the time being or by the clerk of such Board, may summon the overseers or waywardens to show cause at petty sessions why such payment has not been made; and the justices at such petty sessions, after hearing the complaint preferred on behalf of the Board, may, if they think fit, cause the amount of payment in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the overseers or waywardens, or any of them, in like manner as moneys assessed for the relief of the poor may be levied and recovered, and the amount of such arrear, together with the costs, when levied and recovered, to be paid to the Board. (i)

*Appointment of Collectors of Highway Rates  
by Waywardens.*

The power of appointing paid collectors of highway rates with the consent of the inhabitants in vestry assembled, which is vested in a surveyor by the "Highway Act, 1835," and all the provisions of that Act relating to such appointment, shall be vested in and extend to any waywarden required to levy rates in pursuance of the Highway Acts, 1862 and 1864, or either of them; and any meeting of rate-payers entitled to elect a waywarden or waywardens shall be deemed to be included under the expression "Inhabitants in vestry assembled." (j)

*Power of Road Authority to recover Expenses of  
Extraordinary Traffic.*

Where by a certificate of their surveyor it appears to the authority which is liable or has undertaken to repair any highway, whether a main road or not, that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved

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(i) 27 & 28 Vict. c. 101, s. 35.

(j) Ibid. s. 31.

to the satisfaction of the court having cognizance of the case to have been incurred by such authority by reason of the damage.

Provided, that any person against whom expenses are or may be so recoverable may enter into an agreement with the authority for the payment to them of a composition in respect of such weight or traffic, and thereupon he shall not be subject to any proceedings under the above provision. (*k*)

#### 10. BORROWING POWERS OF HIGHWAY BOARD.

##### *Power to borrow on credit of Rates.*

With the approval of the justices in general or quarter sessions, the Highway Board may borrow money for the purpose of defraying the expenses of the improvements in the highways: but previously to applying for such approval the Board shall cause an estimate of the expense of the improvements to be made, and two months at the least before making their application shall give notice of their intention so to do by transmitting a copy to the Clerk of the Peace for the county or division, and by placing a copy of such notice for three successive *Sundays* on the church door of every church of the parish or parishes on behalf of which such works are to be done, or, in the case of any place not having a church, in some conspicuous position in such place.

The notice shall state the following particulars:—1. The nature of the work, the estimated amount of expense to be incurred, and the sum proposed to be borrowed: 2. If the money is borrowed before the 25th March, 1879, the parish or parishes within the district by which the sum borrowed and the interest thereon is to be paid, and in case of more parishes than one being made liable to pay the principal and interest, the annual amounts to be contributed by each parish towards the payment thereof: 3. The number of years within which the principal moneys borrowed are to be paid off, not exceeding twenty years, and the amount to be set apart in each year for paying off the same: 4. The sessions at which the application is to be

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(*k*) 41 & 42 Vict. c. 77, s. 23.

made. Upon the hearing of the application any person or persons may oppose the approval of the justices being given, and it shall be lawful for the justices to give or withhold their approval, with or without modification, as they think just. (l)

All moneys borrowed before the 25th March, 1879, together with the interest thereon, shall be a first charge on the highway rates of each parish liable to contribute to the payment thereof, after paying the sums due to the Highway Board on account of the district fund, in the same manner, so far as the creditor is concerned, as if the money had been borrowed on account of each parish alone; and the sums necessary to repay the borrowed moneys, with interest, shall in each parish be recoverable in the same manner as if they were expenses incurred by the Board in keeping in repair the highways of that parish. But it shall be the duty of the Highway Board, in case of any one parish paying more than its share of such borrowed money, or of the interest thereon, to make good to that parish the excess so paid out of the rates of the other parishes liable to contribute thereto. (l)

All moneys borrowed by a Highway Board after the 25th March, 1879, under the Highway Acts, shall be charged on the district fund but not so as to affect the security, chargeability, or repayment of any moneys borrowed before that date. (m)

The justices may from time to time make general orders in relation to the mode in which applications are to be made to them for their consent to the borrowing of any moneys. (n)

### *Mortgages.*

The clauses of "The Commissioners Clauses Act, 1847," with respect to mortgages to be created by the Commissioners are incorporated, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver. In the construction of these clauses "the Commissioners" shall mean "the Highway

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(l) 27 & 28 Vict. c. 101, s. 47. (m) 41 & 42 Vict. c. 77, s. 8.

(n) 27 & 28 Vict. c. 101, s. 47.

Board ;" and forms are given for the mortgages and transfers of mortgages. (o)

## 11. ACCOUNTS OF HIGHWAY BOARD.

*When to be made up, audited, and published.*

The accounts of the highway authority of every highway district and highway parish shall be made up in such form as the Local Government Board shall from time to time prescribe, and shall be balanced to the 25th of March in each year, and as soon as conveniently may be after such day the said accounts shall be audited and examined by the auditor of accounts relating to the relief of the poor for the audit district in which the highway district or highway parish, or the greater part thereof in rateable value, is situate.

Every such auditor shall (as nearly as may be) have, in relation to the accounts of the highway authority of a highway district or highway parish, and of their officers, the same powers and duties as he has in the case of accounts relating to the relief of the poor; and any person aggrieved by the decision of the auditor shall have the same rights and remedies as in the case of such last-mentioned audit. (p)

For the powers and duties of auditors in the case of accounts relating to the relief of the poor reference may be made to sections 32 & 33 of the 7 & 8 Vict. c. 101, and also to 11 & 12 Vict. c. 91, ss. 7 & 8, 12 & 13 Vict. c. 103, s. 11, and 29 & 30 Vict. c. 113, s. 7, and for the rights and remedies of persons aggrieved by their decisions, to sections 35 & 36 of the 7 & 8 Vict. c. 101.

The auditor shall receive such remuneration as the Local Government Board direct; and such remuneration, together with the expenses incident to the audit, shall be paid by the highway authority of the highway district or highway parish out of the fund or rate applicable to the repair of highways within such district or parish; and such remuneration and expenses may, in default of payment, be recovered in a summary manner. (p)

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(o) 27 & 28 Vict. c. 101, s. 50.

(p) 41 & 42 Vict. c. 77, s. 9.

Within thirty days after the completion of the audit, the Board shall cause a statement showing the receipt and expenditure in respect of each parish, and the apportioned part of expenditure chargeable thereto in respect of the district fund, and such other particulars and in such form as the Local Government Board may direct, to be printed, and sent by post or otherwise to each member of the Board, and to the overseers of every parish within the district having overseers; and the clerk of the Board shall furnish a copy of such statement to any ratepayer or owner of property situate within the district, on his application, and on the payment of a sum not exceeding one penny. (q)

Every highway authority shall keep, in such form as may be directed by the county authority, a separate account of the expenses of the maintenance of the main roads within their jurisdiction, and shall forward copies thereof to the county authority at such time or times in every year as may be required by the county authority, and the accounts so kept shall, where the accounts of the highway authority are audited in the manner above-mentioned, or under 38 & 39 Vict. c. 55, s. 247, which regulates the audit of the accounts of such urban sanitary authorities as are not town councils, be audited in the same manner as the other accounts of such authority, and where the accounts of the highway authority are not so audited shall be subject to such audit as the county authority may direct. If any highway authority makes default in complying with these provisions, or with any directions given in pursuance thereof by the county authority, the county authority may withhold all or any part of the contribution payable by them towards the expenses of the maintenance of main roads by such highway authority for the year in which such default occurs. (r)

The books of account of a Highway Board shall at all seasonable times be open to the inspection of any ratepayer of any highway parish within the district of the Board. (s)

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(q) 27 & 28 Vict. c. 101, s. 36; and 41 & 42 Vict. c. 77, s. 9.

(r) 41 & 42 Vict. c. 77, s. 18.

(s) 27 & 28 Vict. c. 101, s. 36.

*Statements of Accounts.*

The clerk to every Highway Board shall, within such thirty days after the audit, transmit the statement of accounts to the Local Government Board, under a penalty not exceeding ten pounds for neglect. (*t*) The statements so transmitted are to be abstracted, and the abstracts laid before both Houses of Parliament. (*u*) And the Local Government Board may cause to be prepared such forms for the statement as they may from time to time deem suitable, and also from time to time to alter the forms for the annual statement prescribed by the 12 & 13 Vict. c. 35; but no statement shall be transmitted under that Act concerning parishes wholly within a highway district. (*v*) See also the Local Taxation Returns Act, 1877, in note (*x*), *post*, p. 104.

## 12. RECOVERY OF PENALTIES, APPEALS, &amp;c.

*Recovery of Penalties, &c.*

All penalties under the Highway Acts, 1862 and 1864, and all moneys recoverable as penalties, may be recovered summarily before any two or more justices in the manner directed by the 11 and 12 Vict. c. 43, and any Act amending the same; but where any sum adjudged to be paid in respect of such penalties or moneys exceeds five pounds, an appeal may be had by any person aggrieved to a court of general or quarter sessions in manner provided by the 110th section of the Act of the 24 and 25 Vict. c. 96, to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences. (*w*)

All offences, fines, and expenses under the Act of 1878, or any bye-law made in pursuance thereof, may be prosecuted, enforced, and recovered in manner provided by the 11 & 12 Vict. c. 43, and any Acts amending the same, before a "court of summary jurisdiction," that is any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by those Acts :

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(*t*) 25 & 26 Vict. c. 61, s. 27.

(*u*) Ibid. s. 28.

(*v*) Ibid. s. 29.

(*w*) 25 & 26 Vict. c. 61, s. 47.



Provided, that the court, when hearing and determining an information or complaint under the Act, shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty session, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace. (x)

*Appeal to Quarter Sessions against Conviction or Order.*

If any party thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under the Act of 1878, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

- (1.) The appeal shall be made to the next practicable court of quarter sessions for the county or place where the decision appealed from was given holden not less than twenty-one days after the decision of the court from which the appeal is made ; and
- (2.) The appellant shall, within ten days after the pronouncing by the court of the decision appealed from, give notice to the other party and to the court of summary jurisdiction of his intention to appeal and of the ground thereof ; such notice of appeal shall be in writing signed by the person or persons giving the same, or by his, her, or their solicitor on his, her, or their behalf ; and
- (3.) The appellant shall, within three days after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow ; and
- (4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such

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(x) 41 & 42 Vict. c. 77, s. 36.

recognizance or giving such other security as aforesaid, release him from custody :

- (5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just. (y)

#### *Appeal to Special Sessions against Rate.*

If any person feels aggrieved by any rate levied on him for the purpose of raising moneys payable under a precept of a Highway Board on the ground of incorrectness in the valuation of any property included in such rate, or of any person being put on or left out of such rate, or of the inequality or unfairness of the sum charged on any person or persons therein, he may appeal to the justices in special sessions in manner provided by the Act of the Session of the sixth and seventh years of the reign of His Majesty King William the Fourth, chapter ninety-six, sections six and seven, and all the provisions of the said sections shall be applicable to such appeal. (z)

An appeal to quarter sessions from any rate made under the provisions of the Public Health Act, 1875, is given by s. 269 of that Act.

#### *Appeal to Quarter Sessions against Expenditure, &c.*

Where any waywarden of a highway parish of a district, or any ratepayer of such parish, feels aggrieved in respect of the matters following :

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(y) 41 & 42 Vict. c. 77, s. 37.

(z) 27 & 28 Vict. c. 101, s. 37.

1. In respect of any order of the Highway Board for the repair of any highway in his parish on the ground that such highway is not legally repairable by the parish, or in respect of any other order of the Board on the ground that the matter to which such order relates is one in regard to which the Board have no jurisdiction to make an order ;
  2. In respect of any item of expense charged to the separate account of his parish on the ground that such item of expense has not in fact been incurred or has been incurred in respect of a matter upon which the Board have no authority by law to make any expenditure whatever ;
  3. In respect of any item of expenditure charged to the district fund on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the Board has no authority by law to make any expenditure whatever ;
  4. In respect of the contribution required to be made by each parish to the district fund on the ground that such amount, when compared with the contribution of other parishes in the district, is not according to the proportion required by this Act ;
- he may, upon complying with the conditions to be after mentioned, appeal to the court of general or quarter sessions having jurisdiction in the district ; but no appeal shall be had in respect of any exercise of the discretion of the Board in matters within their discretion ; and no appeal shall be had except in respect of the matters and upon the grounds hereinbefore mentioned. (a)

*Conditions of Appeal against Expenditure, &c.*

No such appeal shall be entertained by any court of general or quarter sessions unless the following conditions have been complied with : 1. Notice of the intention of appeal must be served by the appellant on the clerk of the Highway Board in the case of an appeal against an order

within two months after the order, and in the case of an appeal in respect of any item of expense or contribution within one month after the statement of the account of the Board has been sent to each member of the Board as hereinbefore mentioned (*ante*, p. 53): 2. The notice must state the matter appealed against, and the ground of the appeal. On the receipt of the notice the Board may serve a counter-notice on the appellant, requiring him to appear in person or by his agent at the next meeting of the Board and support his appeal. On hearing the appellant the Board may rectify the matter complained of, and if they do so to a reasonable extent, and tender to the appellant a reasonable sum for the costs of his attendance, it shall not be lawful for the appellant to proceed with his appeal. In any other case the appellant may proceed with his appeal, and the reasonable costs of his attendance on the Board shall be deemed part of the costs of the appeal. (b)

#### *Reference to Arbitration.*

If at any time after notice of appeal has been given it appears to the court, on the application of either party in the presence of or after notice has been given to the other party, that the matter in question in such appeal consists wholly or in part of matters of mere account which cannot be satisfactorily tried by the court, it shall be lawful for such court to order that such matters, either wholly or in part, be referred to the arbitration of one or more persons, to be appointed by the parties, or, in case of disagreement, by the court; and the award made on such arbitration shall be enforceable by the same process as the order of the court of quarter sessions. (c)

The provisions of "The Common Law Procedure Act, 1854," relating to compulsory references, shall be deemed to extend to arbitrations directed by the court of quarter sessions. (d)

#### *Proceedings on Appeal against Expenditure, &c.*

If upon the hearing of the appeal it appears to the court that the question in dispute involves an inquiry as

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(b) 27 & 28 Vict. c. 101, s. 39. (c) *Ibid.* s. 40. (d) *Ibid.* s. 41.

to whether a road is or is not a highway repairable by the public, or an inquiry as to any other important matter of fact, the court may either themselves decide such question, or may impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions, and submit to such jury such questions in relation to the matters of fact in dispute as the court think fit; and the verdict of such jury, after hearing the evidence adduced, shall be conclusive as to the questions submitted to them. The questions so submitted shall be in the form and shall be tried as nearly as may be in the manner in which feigned issues are ordinarily tried and the court shall decide the parties to be plaintiffs and defendants in such trials; and subject as aforesaid, the court may, upon the hearing of any appeal, confirm, reverse, or modify any order of the Highway Board, or rectify any account appealed against. (e)

*Costs of Appeal against Expenditure, &c.*

If the appellant is successful, the costs shall, unless the court otherwise order, be paid by the Board, and shall be charged to the common fund of the Board. (f)

If the appellant is unsuccessful, the Board, if the waywarden be the appellant, may charge the costs of the appeal in the same manner as if they were expenses incurred in repairing the roads in such parish (f), and may levy the sum accordingly, and may carry the sum so levied to the account of the several parishes within the jurisdiction of the Board, other than the parish to which the appellant waywarden belongs, in the same manner as if they were expenses contributed by such parishes to the common fund of the Board; but if some ratepayer other than the waywarden is the appellant, the court may order the costs of the appeal to be paid by such appellant; and such costs shall be recoverable in the same manner as a penalty is recovered under "The Highway Act, 1862." (g)

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(e) 27 & 28 Vict. c. 101, s. 42.

(f) Ibid. s. 43; but see note (c) on that section, *post*, p. 164, and 41 & 42 Vict. c. 77, s. 7.

(g) 27 & 28 Vict. c. 101, s. 43.

*Appeal against Order declaring Highway repairable by the Parish.*

Where an order of justices is made under s. 35 of "The Highway Act, 1862," by which a highway is made repairable by the parish, any person aggrieved by the order may appeal against it to a court of quarter sessions holden within four months from the date of the order; see *ante*, p. 30.

*Jurisdiction of Justices.*

The justices assembled in petty sessions at their usual place of meeting may exercise any jurisdiction which they are authorized under the Highway Acts or any of them to exercise in special sessions. (g) No justice of the peace shall act as such in any matter in which he has already acted as a member of the Highway Board, and in which the decision of the Board is appealed against. (h) But no justice of the peace shall be disabled from acting as such at any petty or special or general quarter sessions in any matter merely on the ground that he is by virtue of his office a member of any Highway Board complaining, interested, or concerned in such matter, or has acted as such at any meeting of such Board. (i)

Places situate in different counties, and places situate partly in one county and partly in another county, when united in one highway district, shall, for all matters relating to appeals to quarter sessions against accounts, be deemed to be subject to the jurisdiction of the justices of the county in which the district is situate to which such places shall have been united by any provisional and final order or orders, or to which any such district shall be declared to be subject by the orders constituting the same, in the same manner as if all such places or parts of places were situate in such county. (j)

13. DEFINITIONS AND CONSTRUCTION OF ACTS.

*Definition of Terms.*

The General Highway Act, 5 & 6 Wm. IV. c. 50, "to consolidate and amend the laws relating to highways in

(g) 27 & 28 Vict. c. 101, s. 46.

(h) 25 & 26 Vict. c. 61, s. 38.

(i) 27 & 28 Vict. c. 101, s. 46.

(j) 27 & 28 Vict. c. 101, s. 44.

England," is distinguished in the 25 & 26 Vict. c. 61, as "the principal Act;" and the two Acts, and the other Acts amending the principal Act, are included under the expression "The Highway Acts." (*k*)

But by 27 & 28 Vict. c. 101, s. 1, the 5 & 6 Wm. IV. c. 50, is to be cited by the short title of the "Highway Act, 1835;" the 25 & 26 Vict. c. 61, by the short title of the "Highway Act, 1862;" and the 27 & 28 Vict. c. 101, by the short title of the "Highway Act, 1864."

All these Acts and any Acts passed or to be passed amending them are included under the short title of "The Highway Acts;" and both of the Acts of 1862 and 1864 shall be construed as one. (*l*) The short title of the Act of 1878 is the "Highways and Locomotives (Amendment) Act, 1878."

In the Highway Acts, 1862 and 1864, the word "county" shall not include a "county of a city" or "a county of a town," but where a county is divided into ridings or other divisions having a separate court of quarter sessions of the peace, it shall mean each such division or riding, and not the entire county. For the purposes of those Acts all liberties and franchises, except the liberty of St. Albans, which shall be considered a county, and, except boroughs, shall be considered as forming part of that county by which they are surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary. (*m*) By 27 & 28 Vict. c. 101, s. 3, "county," shall include any division of a county that has a separate county treasurer. In the Act of 1878, "county" has the same meaning as it has in the Highway Acts, 1862 and 1864, except that every liberty not being assessable to the county rate of the county or counties within which it is locally situate shall, for the purposes of that Act other than those relating to the formation and alteration of highway districts, and the transfer of the powers of a Highway Board, be deemed to be a separate county. (*n*)

"County authority" means the justices of a county in

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(*k*) 25 & 26 Vict. c. 61, s. 4.

(*l*) 27 & 28 Vict. c. 101, s. 2.

(*m*) 25 & 26 Vict. c. 61, s. 2.

(*n*) 41 & 42 Vict. c. 77, s. 38.

general or quarter sessions assembled. (o) The word "borough" shall mean any place for the time being subject to the Municipal Corporation Acts. (p) "The metropolis" means the parishes and places mentioned in the Schedules A, B, and C annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by Order in Council in manner in the said Act provided; also the city of London and the liberties of the said city: (q)

"Quarter sessions" includes general sessions: (q)

"Petty sessional division" means any division for the holding a special sessions formed or to be formed under the 9 Geo. IV. c. 43, or any Act amending the same; also any division of a county, or of a riding, division, parts, or liberty of a county, having a separate commission of the peace, in and for which petty sessions or special sessions are usually held, whether in one or more place or places, in accordance with any custom, or otherwise than under the said last-mentioned Act; but does not include any city, borough, town corporate, or district constituted a petty sessional division by the 12 & 13 Vict. c. 18. (q) The word "parish" shall include any place maintaining its own highways. (r)

"Poor law parish" shall mean a place that separately maintains its own poor. "Highway parish" shall mean a place that after the constitution of a highway district separately maintains its own highways, and is entitled to return a waywarden or waywardens to the Highway Board of the district (s); and in the Act of 1878 the same term is defined as a parish or place included or capable of being included in a highway district in pursuance of the Highway Acts, 1862 and 1864, or one of such Acts. (q)

Further, any parish, township, tithing, hamlet, or other place having a known legal boundary in which there are no highways repairable at the expense of the place, or in which the highways are repaired at the expense of any person, body politic or corporate, by reason of any grant, tenure, limitation, or appointment of any charitable gift,

(o) 41 & 42 Vict. c. 77, s. 38.

(p) 25 & 26 Vict. c. 61, s. 2; 41 & 42 Vict. c. 77, s. 38.

(q) 41 & 42 Vict. c. 77, s. 38.

(r) 25 & 26 Vict. c. 61, s. 3.

(s) 27 & 28 Vict. c. 101, s. 3.



or otherwise howsoever than out of a highway rate or other general rate, shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways. (*t*)

Where part of a parish is treated as forming part of a local government or other urban sanitary district for all purposes connected with the repair of highways and the payment of highway rates, but for no other purpose, such part shall, for the purposes of the Highway Acts, 1862 and 1864, be deemed to be a place separately maintaining its own highways, and capable of being included in a highway district; and where the highways of one part of a parish are, in pursuance of a private Act of Parliament, repairable out of a different rate from that out of which the highways of the other part are repairable, each of such parts shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways. (*u*)

The expressions "highway district" and "Highway Board" shall refer only to highway districts formed and Highway Boards constituted in pursuance of the Highway Acts, 1862 and 1864. (*v*)

"Highway authority" means as respects an urban sanitary district not being a borough having a separate court of quarter sessions, the urban sanitary authority, and as respects a highway district the Highway Board, and as respects a highway parish the surveyor or surveyors or other officers performing similar duties. (*w*)

The following areas shall be deemed to be "highway areas," viz., (1.) Urban sanitary districts as defined below: (2.) Highway districts: (3.) Highway parishes not included within any highway district or any urban sanitary district. (*x*)

"Highway rate" shall include any rate, whether poor rate or not, out of the produce of which moneys are payable in satisfaction of precepts of a Highway Board. (*y*)

"Rural sanitary district" and "rural sanitary authority" mean respectively the districts and authorities de-

(*t*) 27 & 28 Vict. c. 101, s. 5.

(*u*) 27 & 28 Vict. c. 101, s. 3; and 38 & 39 Vict. c. 55, s. 216.

(*v*) 25 & 26 Vict. c. 61, s. 3.

(*w*) 41 & 42 Vict. c. 77, s. 38.

(*x*) Ibid.

(*y*) 27 & 28 Vict. c. 101, s. 3.

clared to be rural sanitary districts and authorities by the Public Health Act, 1875: (z)

“Urban sanitary district” and “urban sanitary authority” mean respectively the districts and authorities declared to be urban sanitary districts and authorities by the Public Health Act, 1875, except that for the purposes of the Act of 1878 no borough having a separate court of quarter sessions, and no part of any such borough, shall be deemed to be or to be included in any such district, and where part of a parish is included in such district for the purpose only of the repairs of the highways, such part shall be deemed to be included in the district for the purposes of the last-mentioned Act. (a)

“Person” includes a body of persons corporate or unincorporate. (a)

#### *Construction of Highway Acts.*

The following regulations shall be observed with respect to the construction of the principal Act (the Highway Act, 1835) and the Highway Act, 1862.

The latter Act shall be construed as one with the principal Act so far as is consistent with its provisions. The ninth section of the principal Act, whereby it is enacted that a surveyor may be appointed by the inhabitants of a parish with a salary, shall not apply to any parish within any district formed under the latter Act. The tenth section of the principal Act, whereby it is enacted that the surveyor or surveyors at the time of passing his or their accounts shall deliver to the justices a statement in writing of the name and residence of the person or persons appointed to succeed him or them as a surveyor or surveyors, shall not apply to any parish within any district formed under the latter Act. The thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth sections of the principal Act, providing for the formation of parishes into districts, and the eighteenth and nineteenth sections of the principal Act, providing for the appointment of a Board in large parishes, shall not apply to any parish within any district formed under the latter Act. The penalty imposed by s. 20 of the

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(z) 41 & 42 Vict. c. 77, s. 38.

(a) Ibid.

principal Act on the surveyor for neglect of duty shall not apply to a Highway Board constituted under the latter Act. (b) The thirty-fifth section of the principal Act, whereby it is provided that the ratepayers of any parish may divide amongst themselves the carriage of materials for the repair of the highways, shall not apply to any parish within any district formed under the latter Act. The thirty-ninth, fortieth, forty-third, forty-fourth, and forty-fifth sections of the principal Act relating to the accounts of surveyors shall not apply to the Highway Board of any district formed under the latter Act. (c)

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(b) 25 & 26 Vict. c. 61, s. 42.

(c) Ibid.

## PART II.

## THE LOCOMOTIVE ACTS, 1861 to 1878.

## 1. PRELIMINARY.

*Continuance and Extent of the Locomotive Acts.*

The use of locomotives on turnpike and other roads is regulated by the Locomotive Act, 1861, and the Locomotive Act, 1865, which are to be construed together as one Act (*d*), and by the Highways and Locomotives (Amendment) Act, 1878. The first Act came into operation on the day of its passing, and the latter on the 1st of September, 1865, which day is referred to as the commencement of the Act, and they are at present continued in force to the 31st of December, 1879.

The Locomotive Act, 1861, applied to Great Britain only; but section 15 of that Act having been repealed by the amending Act, both Acts now apply to Great Britain and Ireland. (*e*) The Act of 1878, however, does not extend to Scotland or Ireland. (*f*)

*Definitions.*

“County” shall include any division of a county that has a separate county treasurer, and any riding or other division having a separate court of quarter sessions; and every liberty not being assessable to the county rate of the county or counties within which it is locally situate shall be deemed to be a separate county; but the word “county” shall not include a “county of a city” or a “county of a town.” The liberty of St. Albans shall be considered a county; but, except as above mentioned, all

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(*d*) 28 & 29 Vict. c. 83, s. 13.

(*e*) 24 & 25 Vict. c. 70, s. 15.

(*f*) 41 & 42 Vict. c. 77, s. 2.

liberties and franchises, other than boroughs subject to the Municipal Corporation Acts, shall be considered as forming part of that county by which they are surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary. (g)

“County authority” means the justices of a county in general or quarter sessions assembled. (h)

“The metropolis” means the parishes and places mentioned in Schedules A, B, C of the Metropolis Management Act, 1855, and any parishes to which that Act may be extended: it includes the city of London and its liberties. (h)

“Locomotive” means a locomotive propelled by steam, or by other than animal power.

## 2. CONSTRUCTION AND WEIGHT OF LOCOMOTIVES.

### *Weight of Locomotives and Construction of Wheels.*

In England it shall not be lawful to use on any turnpike road or highway a locomotive constructed otherwise than in accordance with the following provisions; (that is to say,)

- (1.) A locomotive not drawing any carriage, and not exceeding in weight three tons, shall have the tires of the wheels thereof not less than three inches in width, with an additional inch for every ton or fraction of a ton above the first three tons; and
- (2.) A locomotive drawing any waggon or carriage shall have the tires of the driving wheels thereof not less than two inches in width for every ton in weight of the locomotive, unless the diameter of such wheels shall exceed five feet, when the width of the tires may be reduced in the same proportion as the diameter of the wheels is increased, but in such case the width of such tires shall not be less than fourteen inches; and
- (3.) A locomotive shall not exceed nine feet in width

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(g) 25 & 26 Vict. c. 61, s. 2; 27 & 28 Vict. c. 101, s. 3; and 41 & 42 Vict. c. 77, s. 38.

(h) 41 & 42 Vict. c. 77, s. 38.

or fourteen tons in weight, except as hereinafter provided; and

- (4.) The driving wheels of a locomotive shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than three inches in width nor more than three quarters of an inch in thickness, extending the full breadth of the tire, and the space intervening between each such cross-bar shall not exceed three inches. (i)

*Fine for using Locomotive improperly constructed.*

The owner of any locomotive used contrary to the foregoing provisions shall for every such offence be liable to a fine not exceeding five pounds: Provided that the mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county (that is, the justices in general or quarter sessions assembled), may, on the application of the owner of any locomotive exceeding nine feet in width or fourteen tons in weight, authorize such locomotive to be used on any turnpike road or highway within the areas respectively above mentioned, or part of any such road or highway, under such conditions (if any) as to them may appear desirable. Provided also, that the owner of a locomotive used contrary to the above provision relating to a locomotive drawing any waggon or carriage shall not be deemed guilty of an offence under section 28 if he proves to the satisfaction of the court having cognizance of the case that such locomotive was constructed before the 16th August, 1878, and that the tires of the wheels thereof are not less than nine inches in width. (j)

*Weight on each pair of Wheels.*

It shall not be lawful for any waggon, wain, cart, or other carriage drawn or propelled by steam or other than animal power, not having cylindrical wheels, to carry any

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(i) 41 & 42 Vict. c. 77, s. 28.

(j) Ibid.

greater weight than is permitted in such waggon, wain, cart, or carriage by the general Turnpike Act; and it shall not be lawful for any waggon, wain, cart, or other carriage having cylindrical wheels, to carry, over or above the weight of the waggon, wain, cart, or carriage, any greater weight than one ton and a half for each pair of wheels, unless the fellies, tires, or shoes are four inches or more in breadth; nor to carry a greater weight than two tons for each pair of wheels, unless the fellies, tires, or shoes are six inches or more in breadth; nor to carry a greater weight than three tons for each pair of wheels, unless the fellies, tires, or shoes are eight inches or more in breadth; and for every single wheel one-half of that permitted to be carried on a pair of wheels; nor in any case to carry a greater weight than four tons on each pair of wheels, or two tons on each wheel; but if such waggons, wains, or other carriages are built and constructed with springs upon each axle, then they shall be allowed to carry one-sixth more weight in addition to the above-mentioned weights upon each pair of wheels; provided always, that the regulation of weight herein mentioned and provided shall not extend to any waggon, wain, cart, or other carriage carrying only one tree or one log of timber, or one block of stone, or one cable of rope, or one block, plate, roll, or vessel of iron or other metal, or compounded of any two or more metals cast, wrought, or united in one piece. (k)

*Steam Locomotives to be so constructed as to consume their Smoke.*

In England every locomotive used on any turnpike road or highway shall be constructed on the principle of consuming its own smoke; and any person using any locomotive not so constructed, or not consuming, so far as practicable, its own smoke, shall be liable to a fine not exceeding five pounds for every day during which such locomotive is used on any such turnpike road or highway. (l)

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(k) 24 & 25 Vict. c. 70, s. 4.

(l) 41 & 42 Vict. c. 77, s. 30.

*Weight of Locomotive and Name and Residence of Owner to be affixed thereto.*

The weight of every locomotive, and the name of the owner or owners thereof, shall be conspicuously and legibly affixed thereon; and any owner not having affixed such weight and such name shall, upon conviction thereof before two justices, forfeit any sum not exceeding five pounds; and any owner who shall fraudulently affix thereon any incorrect weight shall, upon conviction thereof, forfeit any sum not exceeding ten pounds. (m)

The name and residence of the owner of every locomotive shall be affixed thereto in a conspicuous manner. If it is not so affixed, the owner shall, on summary conviction, be liable to a penalty not exceeding two pounds. (n)

### 3. MODE OF USING LOCOMOTIVES.

*Rules for the manner of Working Locomotives on Turnpike Roads and Highways.*

Every locomotive propelled by steam or any other than animal power on any turnpike road or public highway, shall be worked according to the following rules and regulations, viz.—

Firstly, at least three persons shall be employed to drive or conduct such locomotive, and if more than two waggons or carriages be attached thereto, an additional person shall be employed, who shall take charge of such waggons or carriages: (o)

Secondly (in England), one of such persons, while the locomotive is in motion, shall precede the locomotive on foot, and shall in case of need assist horses, and carriages drawn by horses, passing the same: (p)

Thirdly, the drivers of such locomotive shall give as much space as possible for the passing of other traffic: (q)

Fourthly, the whistle of such locomotive shall not be

(m) 24 & 25 Vict. c. 70, s. 12.

(o) 28 & 29 Vict. c. 83, s. 3.

(n) 28 & 29 Vict. c. 83, s. 7.

(p) 41 & 42 Vict. c. 77, s. 29.

(q) 28 & 29 Vict. c. 83, s. 3.



sounded for any purpose whatever; nor shall the cylinder taps be opened within sight of any person riding, driving, leading, or in charge of a horse upon the road; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety valve, so that no steam shall blow off when the locomotive is upon the road: (r)

Fifthly, every such locomotive shall be instantly stopped, on the person preceding the same or any other person with a horse, or carriage drawn by a horse, putting up his hand as a signal to require such locomotive to be stopped: (r)

Sixthly, any person in charge of any such locomotive shall provide two efficient lights to be affixed conspicuously, one at each side on the front of the same, between the hours of one hour after sunset and one hour before sunrise. (r)

*Penalty on non-compliance with Rules.*

In the event of a non-compliance with any of the above provisions as to working locomotives on turnpike roads and highways, the owner of the locomotive shall, on summary conviction thereof before two justices, be liable to a penalty not exceeding ten pounds; but it shall be lawful for such owner, on proving that he has incurred such penalty by reason of the negligence or wilful default of any person in charge of or in attendance on such locomotive, to recover summarily from such person the whole or any part of the penalty he may have incurred as owner. (r)

*Limit of Speed of Locomotives on Turnpike Roads and Highways.*

Subject and without prejudice to the regulations authorized to be made by local authorities, it shall not be lawful to drive any such locomotive along any turnpike road or public highway at a greater speed than four miles an hour, or through any city, town, or village at a greater speed than two miles an hour; and any person acting contrary thereto shall for every such offence, on summary

conviction thereof, forfeit any sum not exceeding ten pounds. (e)

*Use of Locomotives restricted over Suspension and other Bridges.*

It shall not be lawful for the owner or driver of any locomotive to drive it over a suspension bridge, nor over any bridge on which a conspicuous notice has been placed, by the authority of the surveyor or persons liable to the repair of the bridge, that the bridge is insufficient to carry weights beyond the ordinary traffic of the district, without previously obtaining the consent of the surveyor of the road or bridgemaster under whose charge such bridge shall be for the time being, or of the persons liable to the repair of such bridge; and in case such owner of the locomotive and surveyor of the road or bridge, or bridgemaster, shall differ in opinion as to the sufficiency of any bridge to sustain the transit of the locomotive, then the question shall be determined by an officer to be appointed, on the application of either party, by the Local Government Board, whose certificate of sufficiency of such bridge shall entitle the owner of the locomotive to take the same over such bridge. (t)

*Saving for Locomotives used for Ploughing Purposes.*

Any provision in any Act contained prohibiting, under penalty, the erection and use of any steam-engine, gin, or other like machine, or any machinery attached thereto, within the distance of twenty-five yards from any part of any turnpike road, highway, carriageway, or cartway, unless such steam-engine, gin, or other like engine or machinery be within some house or other building, or behind some wall, fence, or screen sufficient to conceal or screen the same from such turnpike road, highway, carriageway, or cartway, shall not extend to prohibit the use of any locomotive steam-engine for the purpose of ploughing within such distance of any turnpike road, highway, carriageway, or cartway, provided a person shall be stationed

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(e) 28 & 29 Vict. c. 83, s. 4.

(t) 24 & 25 Vict. c. 70, s. 6.

in the road, and employed to signal the driver when it shall be necessary to stop, and to assist horses, and carriages drawn by horses, passing the same, and provided the driver of the engine do stop in proper time. (u)

*Power to Local Authorities to make Orders as to Hours during which Locomotives may pass over Roads.*

The mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and, in other parts of England, the council of any borough which has a separate court of quarter sessions, and the county authority of any county, may make bye-laws as to the hours during which locomotives are not to pass over the turnpike roads or highways situate within the areas respectively above mentioned, the hours being in all cases consecutive hours and no more than eight out of the twenty-four, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge where such authority is satisfied that such use would be attended with danger to the public; and any person in charge of a locomotive acting contrary to such bye-laws shall be liable to a fine not exceeding five pounds. (v)

*Power of County Authority to License Locomotives.*

A county authority may from time to time make, alter, and repeal bye-laws for granting annual licenses to locomotives used within their county which are not used solely for agricultural purposes, and the fee (not exceeding ten pounds) to be paid in respect of each license; and the owner of any locomotive for which a license is required under any bye-law so made who uses or permits the same to be used in contravention of any such bye-law shall be liable to a fine not exceeding forty shillings for every day on which the same is so used. (w)

The fees for licenses shall be carried to and applied as part of the county rate. (w)

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(u) 28 & 29 Vict. c. 83, s. 6.

(v) 41 & 42 Vict. c. 77, s. 31.

(w) Ibid. s. 32.

*Confirmation of Bye-laws.*

A bye-law made under the Act of 1878, and any alteration made therein and any repeal of a bye-law, shall not be of any validity until it has been submitted to and confirmed by the Local Government Board. And any such bye-law shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district. (x)

## 4. INJURY CAUSED BY LOCOMOTIVES.

*Damage caused by Locomotives to Bridges to be made good by Owners.*

X Where any turnpike or other roads upon which locomotives are or hereafter may be used, pass or are or shall be carried over or across any stream or watercourse, navigable river, canal, or railway, by means of any bridge or arch (whether stationary or moveable), and such bridge or arch, or any of the walls, buttresses, or supports thereof shall be damaged by reason of any locomotive or any waggon or carriage, drawn or propelled by or together with a locomotive passing over the same or coming into contact therewith, none of the proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons interested in or having the charge of such navigable river, canal, or railway, or the tolls thereof, or of such bridge or arch, shall be liable to repair or make good any damage so to be occasioned, or to make compensation to any person for any obstruction, interruption, or delay which may arise therefrom to the use of such bridge or arch, navigable river, canal, or railway, but every such damage shall be forthwith repaired to the satisfaction of the proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons as aforesaid respectively interested in or having the charge of such river,

canal, or railway, or the tolls thereof, or of such bridge or arch, by and at the expense of the owner or owners, or the person or persons having the charge of such locomotive at the time of the happening of such damage; and all such owner and owners, person and persons, having the charge of such locomotive as aforesaid, shall also be liable, both jointly and severally, to reimburse and make good, as well to the proprietors, undertakers, directors, conservators, trustees, commissioners, and other persons interested in or having the charge of any such navigable river, canal, or railway, or the tolls thereof, or of such bridge or arch, as to all persons navigating on or using, or who but for such obstruction, interruption, or delay would have navigated on or used the same, all losses and expenses which they or any of them may sustain or incur by reason of any such obstruction, interruption, or delay, such losses and expenses to be recoverable by action at law, which action in case of such proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons so interested as aforesaid, may be brought in the name or names of their agent or agents, clerk or clerks for the time being, or by any person or persons legally authorized to act in their behalf. (y)

*Right of Action in case of Nuisance.*

Nothing contained in the Acts of 1861 and 1865 shall authorize any person to use upon a highway a locomotive engine which shall be so constructed or used as to cause a public or private nuisance; and every such person so using such engine shall be liable to an indictment or action, as the case may be, for such use, where, but for the passing of the Acts, such indictment or action could be maintained. (z)

*Saving as to Actions at Law.*

Nothing contained in the Acts of 1861 and 1865 shall authorize any person to use a locomotive which may be

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(y) 24 & 25 Vict. c. 70, s. 7.

(z) Ibid. s. 13.

so constructed or used as to be a public nuisance at common law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of a locomotive. (a)

## 5. MISCELLANEOUS PROVISIONS.

### *Turnpike Tolls in respect of Locomotives.*

The Locomotives Act, 1861, gives a scale of tolls to be taken by the trustees, corporations, commissioners, and other persons acting under and in execution of any then existing General or Local Turnpike Road Act or Public Bridge Act (b), and repeals all clauses and provisions in any such Act authorizing different tolls to be taken, except in the case of tolls authorized to be taken in respect of private roads or bridges, or roads comprised in the Commercial Roads Continuation Act, 1849. (c)

### *Provisions of general Acts relating to Turnpike Roads to apply to Locomotives.*

All the clauses and provisions of any general or local Acts relating to turnpike roads or highways shall, so far as the same are not expressly altered or repealed by or are not inconsistent with the provisions of the Locomotive Acts, apply to all locomotives propelled by other than animal power, and to all waggons, wains, carts, and carriages of any other description drawn by such locomotive, and to the owners, drivers, and attendants thereof, in like manner as if drawn by animal power. (d)

### *Recovery of Penalties, Appeals, &c.*

All offences, fines, and expenses under the Act of 1878, or any bye-law made in pursuance of that Act, may be prosecuted, enforced, and recovered in the manner mentioned at p. 54, *ante*. (e)

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(a) 28 & 29 Vict. c. 83, s. 12.

(b) 24 & 25 Vict. c. 70, s. 1.

(c) *Ibid.* s. 2. (d) *Ibid.* s. 12.

(e) 41 & 42 Vict. c. 77, s. 36.

Any party who thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction, on determining any information or complaint under the Act of 1878, may appeal therefrom to quarter sessions, subject to the conditions and regulations mentioned at p. 55, *ante.* (*f*)

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(*f*) 41 & 42 Vict. c. 77, s. 37.

PART I.  
THE HIGHWAY ACT, 1862.

25 & 26 VICT. CAP. 61.

AN ACT FOR THE BETTER MANAGEMENT OF HIGHWAYS IN  
ENGLAND. [29TH JULY, 1862.]

WHEREAS it is expedient to amend the law relating to highways in England: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PRELIMINARY.

*Limits of Act.*

1. This Act shall not extend to Scotland or Ireland.

*Definition of "County" and "Borough."*

2. The word "county" in this Act shall not include a "county of a city" or a "county of a town," but where a county, as hereinbefore defined, (a) is divided into ridings or

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(a) The words "as hereinbefore defined," as here used, are not very intelligible; the word "county," if defined at all in the preceding part of the section, is only defined by the process of excluding "county of a city" and "county of a town;" and if such counties be excluded, then those which remain are the territorial counties, or divisions of counties, having separate courts of quarter sessions of the peace. By the Act of 1864, 27 & 28 Vict. c. 101, s. 3, *post*, p. 127, "county" shall include any division of a county that has a separate county treasurer; and by the Act of 1878, 41 & 42 Vict. c. 77, s. 38, *post*, p. 220, a liberty not assessable to the county rate shall be deemed a separate county for all the purposes of that Act, except those relating to the formation and alteration of highway districts, and the transfer of powers of a Highway Board.



other divisions having a separate court of quarter sessions of the peace, it shall mean each such division or riding, and not the entire county; and for the purposes of this Act all liberties and franchises, (b) except the liberty of St. Albans which shall be considered a county, and except boroughs as hereinafter defined, shall be considered as forming part of that county by which they are surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary; the word "borough" shall mean a borough as defined by the Act of the session holden in the Fifth and Sixth Years of King William the Fourth, Chapter Seventy-six, "for the regulation of municipal corporations in England and Wales," or any place to which the provisions of the said Act have been or shall hereafter have been extended. (c)

*Definition of "Parish," "Highway District," and  
"Highway Board."*

3. The word "parish" shall include any place maintaining its own highways; (d) the expressions "highway district" and "Highway Board" shall refer only to highway districts formed and Highway Boards constituted in pursuance of this Act.

*Definition of "Principal Act," and "Highway Acts."*

4. The Act passed in the session holden in the Fifth and Sixth Years of the Reign of his late Majesty King William the Fourth, Chapter Fifty, and intituled "An Act to consolidate and amend the Laws relating to Highways in that

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(b) A Chartered Corporate Town not under the Municipal Corporations Act would be included in the words "liberties and franchises," and for the purposes of the Act would be attached to the county. See Jacob's "Law Dictionary" and Wood's "Institute" as to the meaning of the word Franchise.

(c) By 5 & 6 Wm. IV. c. 76, s. 142, the word "borough" shall be construed to mean city, borough, port, cinque port, or town corporate named in one of the schedules (A) and (B) to the Act. See also the case of *Giles v. Glubb*, *post*, p. 84.

(d) See 27 & 28 Vict. c. 101, s. 3, for the definition of "Poor Law

part of Great Britain called England," is hereinafter distinguished as "the principal Act;" and this Act and the principal Act, and the other Acts amending the principal Act, are hereinafter included under the expression "the Highway Acts." (e)

#### FORMATION OF HIGHWAY DISTRICTS. (f)

*Powers to justices, in General or Quarter Sessions assembled, to issue Provisional Orders for forming Highway Districts.*

5. Any five or more justices of a county may by writing under their hands require the Clerk of the Peace to add to or send with the notice required by law to be given of the holding of courts of general or quarter sessions (g) a notice in the form marked (A) in the schedule, or as near thereto as circumstances admit, that at the court therein

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Parish" and "Highway Parish," and also s. 5 of that Act. And see s. 32 (*post*, p. 110), as to places formerly extra-parochial, and 41 & 42 Vict. c. 77, s. 25 (*post*, p. 211), as to parishes which do not in point of fact maintain any highways.

(e) See 27 & 28 Vict. c. 101, s. 1, "Short Title of Highway Acts." There is no express incorporation of the Amendment Act of 1878 with these Acts.

(f) With reference to highways and bridges in the county of Sussex, see 28 Vict. c. 37.

(g) The Commission of the Peace contains the following direction:—  
 "And We command, by the tenor of these presents, our Sheriff of ——— that at certain days and places, which you or any such two or more of you as is aforesaid shall make known to him, he cause to come before you, or such two or more of you as aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without), by whom the truth of the matter in the premises shall be better known and inquired into." A precept is accordingly issued about fifteen days before the sessions under the hands and seals of two of the justices, commanding the sheriff of the county to have the jurors before the justices of the county on a day and at a place mentioned, and to make known to all coroners, gaolers, high constables, &c., to be then in attendance, and to proclaim throughout the county that the sessions will be then and there holden, &c. Public notice of the time and place of holding the sessions is also given by advertisement.

By 11 Geo. IV. & 1 Wm. IV. c. 70, s. 25, the justices of the peace in every county, riding, or division for which quarter sessions of the peace ought to be held, shall hold their general quarter sessions of the peace in the first week after the 11th day of October, in the first week after the 28th day of December, in the first week after the 31st day of March, and in the first week after the 24th day of June. But

mentioned a proposal (*h*) will be made to the justices to divide the county or some part thereof into highway districts, or to constitute the whole or some part thereof a highway district, (*i*) and also require the Clerk of the Peace to send by post in a prepaid letter notices in the aforesaid form to the churchwardens or overseers of every parish mentioned in the said notice; (*j*) and upon such requisition being complied with the justices assembled at the court of general or quarter sessions mentioned in the

with regard to the sessions which fall to be held during the time usually fixed for the spring assizes, the 4 & 5 Wm. IV. c. 47 enacts that the justices assembled in their general quarter sessions in the week next after the 28th December in any year, may name (if they shall see occasion to do so) two justices of the peace, who shall be empowered, as soon as may be after the time for holding the spring assizes shall be appointed, to fix the day for holding the next general quarter sessions of the peace for such county, riding, or division, so as such time shall not be earlier than the 7th day of March, nor later than the 22nd day of April, and to give notice of the day so fixed by advertisement in such newspaper as shall be directed by the justices so assembled; and in every such case the general quarter sessions held on the day so fixed and notified shall be valid, and it shall not be necessary to hold any sessions of the peace for such county, riding, or division in the next week after the 31st day of March. Where, however, no such day is fixed, the sessions shall be held in the week next after the 31st day of March, as by the 11 Geo. IV. & 1 Wm. IV. c. 70, s. 25, is required.

(*h*) The "proposal" will properly be made by the five or more justices who give the notice in writing referred to in the preceding part of the section.

(*i*) According to the form (A) in the schedule to this Act, the proposal may be (1) to divide the county into highway districts, (2) to divide the parts of a county into highway districts, (3) to constitute the whole county a highway district, or (4) to constitute particular parishes in the county a highway district.

But in order that highway districts may be made so far as possible coincident with rural sanitary districts, it is enacted by the Act of 1878, 41 & 42 Vict. c. 77, s. 3, *post*, p. 181, that in forming any highway districts the county authority (that is, the justices in general or quarter sessions assembled) shall have regard to the boundaries of the rural sanitary districts in their county, and shall, so far as may be found practicable, form highway districts so as to be coincident in area with rural sanitary districts, or wholly contained within rural sanitary districts.

(*j*) The notice is to be sent to the churchwardens or overseers; it will, however, be the most advisable course to address it to the churchwardens and overseers of the several parishes. When justices propose to form a highway district, it is a condition precedent that notice be first sent to all the parishes proposed to be included, and the order is bad if any parish has been omitted. *Reg. v. Sussex JJ.*, 28 J. P. 469.

notice may entertain such proposal, and make a provisional order dividing their county or some part thereof into highway districts, or constituting the whole or some part of their county a highway district, for the more convenient management of highways, (*k*) but such order shall not be of any validity unless it is confirmed by a final order of the justices assembled at some subsequent court (*l*) of general or quarter sessions. . . . (*m*)

*Regulations as to the making, &c., of Orders of Justices.*

6. The following regulations shall be enacted as to the making, confirmation, and approval of the orders of justices for forming highway districts:—

- (1.) The justices making a provisional order under this Act shall appoint some subsequent court of general or quarter sessions, to be held within a period of not more than six months, for the taking into consideration the confirmation of the provisional order by a final order:
- (2.) The Clerk of the Peace shall add to or send with the notice required by law to be given of the holding of courts of general or quarter sessions (*n*) a notice in the form marked (B) in the schedule hereto, or as near thereto as circumstances admit, of the appointment so made by the justices in relation to the confirmation of the provisional order:
- (3.) The justices assembled at the appointed court of general or quarter sessions may make a further order quashing the provisional order, or confirming it with or without variations, or respiting the

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(*k*) See note (*i*) *supra*.

(*l*) The subsequent court must be held within a period of not more than six months after the making of the provisional order. See s. 6, *post*.

(*m*) The proviso to this section is repealed by 27 & 28 Vict. c. 101, s. 6, and in lieu of it, it is enacted that when it is proposed that only part of a county is to be constituted a highway district, not less than two out of the five justices making such proposal shall be resident in the said district, or acting in the petty sessional division in which such district, or some part thereof, is situate.

(*n*) As to the sessions, see 11 Geo. IV. & 1 Wm. IV. c. 70, s. 25, *ante*, page 80.

consideration of such provisional order to some subsequent court of general or quarter sessions, provided,—

Firstly, that where the variations made extend to altering the parishes (*o*) constituting any highway district or districts as formed in the provisional order, the order shall be deemed to be provisional only, and shall be dealt with accordingly:

Secondly, that where a respite is made to any subsequent general or quarter sessions, the Clerk of the Peace shall give notice of such respite in manner in which he is required to give notice in respect of sessions at which a provisional or final order is proposed to be made: (*p*)

- (4.) The provisional order shall state the parishes to be united in each district, (*q*) the name by which the district is to be known, (*r*) and the number of waywardens (such number to be at least one) which each parish is to elect: (*s*)

(*o*) The words “altering the parishes” appear to mean adding to or taking one or more parishes from those proposed to be united into a highway district. If the original order comprised more than one highway district, but the variations affect only one of the districts, the order is only to be deemed provisional so far as regards that district, see 27 & 28 Vict. c. 101, s. 4, *post*, p. 127.

With regard to subsequent alterations of a highway district, see s. 39 (*post*, p. 116), and 27 & 28 Vict. c. 101, s. 14 (*post*, p. 136).

(*p*) As to the notice here mentioned, see s. 5, and note (*g*), *ante*, p. 80.

(*q*) Care must be taken that each parish named in the order comes within the definition of a parish in s. 3, *ante*, and in s. 3 of 27 & 28 Vict. c. 101. Further with regard to this provision see 27 & 28 Vict. c. 101, s. 4, *post*, p. 127.

(*r*) In no case should the name of an individual be given to the district. The proper name to give it will be the name of the principal parish comprised in it; or if the district be conterminous with a division of a county, as a hundred, &c., it should be named after the hundred, &c.

(*s*) As regards an alteration in the number of waywardens see 27 & 28 Vict. c. 101, s. 14. As to the election of waywardens see s. 10, *post*; and particularly the last division but one of that section, and the note thereon.

Where a provisional order for forming a highway district constituted

(5.) \* \* \* (t)

(6.) Notice of the provisional and final orders shall as soon as possible after the making thereof be given by the Clerk of the Peace, by publishing a copy in the *London Gazette* (u) and in one or more newspapers circulating in the county, or if the whole county is not affected by such order in one or more newspapers circulating in the district affected by such orders, (v) and by sending a copy by post in a prepaid letter to the overseers of every parish

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a certain township (E) and other parishes and places named therein a highway district, and directed that one waywarden should be elected for each of the said parishes, townships, and places, and the township of (E) was divided into three hamlets, each of which maintained its own highways, which were not separately named in the order, it was held that the provisional order and the final order based on it were bad, as the first did not state whether any or what waywardens were to be elected for the three hamlets under 25 & 26 Vict. c. 61, s. 6 (subsection 4)—*Reg. v. York (W.R.) JJ.*, 34 L. J. M. C. 227, 12 L. T. (N. S.) 580, 29 J. P. 440.

The borough of East Looe is an ancient borough, having liberties and franchises, with charters containing non-intromittant clauses, but is not a borough within the exception in s. 2 of the 25 & 26 Vict. c. 61. It is wholly surrounded by the county of Cornwall, and maintains its own poor and highways. Under these circumstances, it was held that the justices of the county might take the proper proceedings in quarter sessions for making it a part of a highway district under the 25 & 26 Vict. c. 61, s. 5; and further, that they had jurisdiction to hear a complaint by the waywardens against the overseers of the poor of the borough for not paying to the treasurer of the Highway Board the sum ordered by the precept of the Board to be levied in the borough. It was also held that the following description of the borough—"The several parishes, townships, tithings, hamlets, or places of Liskeard Point, &c., &c., East Looe, &c., &c., shall be inserted, &c., &c."—in the order constituting the highway district, was not such an imperfect description as to vitiate the order.—*Giles v. Glubb*, 13 L. T. (N. S.) 526.

(t) This subsection is repealed by 27 & 28 Vict. c. 101, s. 10, *post*, p. 132.

(u) But by 27 & 28 Vict. c. 101, s. 12, no order of justices forming a highway district shall be invalidated by reason of its not being published in the *London Gazette*.

(v) If any newspaper be published within the district it will be proper that the notices should be published in it; but they may also be published in any other newspaper "circulating" in the district; though what is meant by "circulating" is not very clear: the *Times* and other London newspapers "circulate" in most districts throughout the country.

within the proposed highway district, and there shall be added to the notice of the provisional order the date of the sessions at which the confirmation of such order will be considered.

*Restrictions on formation of Highway Districts.*

7. The following restrictions shall be imposed with respect to the formation of highway districts in pursuance of this Act (*w*) :—

Firstly, there shall not be included in any highway district formed in pursuance of this Act any of the following places ; that is to say,—

Any part of a county to which the Act passed in the session holden in the Twenty-third and Twenty-fourth Years of the reign of Her present Majesty, Chapter Sixty-eight, and intituled “An Act for the better Management and Control of the Highways in South Wales,” extends : (*x*)

The Isle of Wight : (*y*)

Any district constituted under the Public Health Act, 1848, and the Local Government Act, 1858, or either of such Acts : (*z*)

\* \* \* (*a*)

(*w*) See also the 41 & 42 Vict. c. 77, s. 3, *post*, p. 181, which requires that highway districts shall be made so far as practicable coincident with rural sanitary districts.

(*x*) That is to say, the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan. (See 23 & 24 Vict. c. 68, s. 44, in Glen’s “Highway Laws,” second edition.)

(*y*) The Local Act, 53 Geo. III. cap. xcii., provides for repairing the roads and highways in the Isle of Wight.

(*z*) The corresponding provisions of the Public Health Act, 1875, are now, by s. 313 of that Act, to be substituted for the provisions of the Acts mentioned in this clause ; and the clause must therefore be read as prohibiting the inclusion in a highway district of a local government district constituted under the Public Health Act, 1875. As regards highways in such districts, see Glen’s “Law of Public Health and Local Government” (ninth edition) ; and also Glen’s “Highway Laws” (second edition).

With regard to the inclusion of part of a highway district in a local government district, see s. 41, *post*, p. 118.

(*a*) This clause, which required the consent of a “Board for the repair of Highways” formed under s. 18 of the Highway Act, 1835 (5

Any parish or place within the limits of the metropolis as defined by the Act passed in the session holden in the Eighteenth and Nineteenth Years of Her Majesty, Chapter One Hundred and Twenty, and intituled "An Act for the better Local Management of the Metropolis : " (a)

Any parish or place, or part of a parish or place, the highways whereof are maintained under the provisions of any local Act of Parliament : (b)

Secondly, there shall not be included in any highway district formed in pursuance of this Act any parish or place or part of a parish or place within the limits of a borough without the consent, firstly, of the council of such borough, and, secondly, of the vestry of the parish which, or part of which, is proposed to be included : (c)

Thirdly, where any parish separately maintaining its

& 6 Wm. IV., c. 50), on or before the 29th January, 1863, to be given where it was proposed to include any parish under their jurisdiction in a highway district under the present Act, is now repealed by s. 12 of the 41 & 42 Vict., c. 77, *post*, p. 199.

By s. 42, subsection 4, *post*, the 18th and 19th sections of 5 & 6 Wm. IV. c. 50, relating to the appointment of Highway Boards under that Act for large parishes, shall not apply to any district formed under the 25 & 26 Vict. c. 61 ; such Boards may, however, still be appointed in other places.

(a) See schedules (A) (B) and (C) of 18 & 19 Vict. c. 120.

(b) By 26 & 27 Vict. c. 94, s. 1, "Local Act," as here used, does not include Turnpike Acts.

In the case of *Milton next Sittingbourne v. Faversham District Highway Board* (10 B. & S. 548), a question arose as to the jurisdiction of the Board, whose district included that part of the parish of M. not within the town of M., the town of M. being under the jurisdiction of Improvement Commissioners appointed in pursuance of "an Act for better paving, &c., the town of M.," the limits of which Act, however, were not otherwise defined. It was held that the word "town" meant the town as it extended from time to time; that a highway was within the town if there was a continuous series of houses in it so contiguous as to form a congregation of human habitations; and that the fact of the commissioners lighting the highways was not conclusive as to their being in the town.

(c) The consent of the vestry must be given at a meeting duly convened for the purpose, and the "proposal" should be stated in the notice convening the meeting. Further, with regard to this section, see 27 & 28 Vict. c. 101, s. 7, third subdivision; and also the same statute, s. 8.



own highways is situate in more than one county the whole of such parish shall, for the purposes of this Act, be deemed to be within the county within which the church of such parish, or (if there be no church) the greater part (d) of such parish, is situate:

Lastly, where a parish separately maintaining its own poor is divided into townships, tithings, hamlets, or places, each of which separately maintains its own highways, it shall be lawful for the justices, if they think fit, in their provisional order to combine such townships, tithings, hamlets, and places, and to declare that no separate waywardens shall be elected for such townships, tithings, hamlets, and places, and that such parish shall be subject to the same liabilities in respect of all the highways within it which were before maintained by such townships, tithings, hamlets, and places separately, as if all their several liabilities had attached to the whole parish; (e) and that a waywarden or way-

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(d) The words here used, "greater part," are not very clear; they admit of more than one construction: they may refer to the greater part in respect of area, or to the greater part in respect of rateable value. Perhaps the former would be the proper construction, though practically it may not be of much moment which county the parish is deemed to be within. See, however, the new provision in 27 & 28 Vict. c. 101, s. 13, as to the union of parishes in different counties; also 41 & 42 Vict. c. 77, s. 19, under which a highway district situated in more than one county is to be treated as if the portion in each county were a separate highway district, for the purposes of the provisions relating to the repayment of part of the expenses of maintenance of main roads.

(e) By 4 & 5 Wm. IV. c. 76, s. 109, the word "parish" shall be construed to include any parish, city, borough, town, township, liberty, precinct, vill, village, hamlet, tithing, chapelry, or any other place, or division or district of a place, *maintaining its own poor*, whether parochial or extra-parochial: the above words, "parish separately maintaining its own poor," refer to a parish divided into townships, &c., which have not had separate overseers appointed, and therefore do not separately maintain their own poor. At common law, a *parish* is primarily liable to repair all public highways within its ambit; but, nevertheless, townships and other smaller divisions of a parish are often by custom liable to repair the highways within them. When such is the case, the Act enables the justices to combine the townships, &c., so that the whole Poor Law parish shall be liable jointly for the repair of the highways within it. Where a township or other division of a parish separately maintains its own poor, and does not come within the definition of a parish in s. 3 of the present Act, being further subdivided for highway purposes, the justices may, it would seem, combine the subdivided portions of the township, so as to make

wardens shall be elected for such parish as a whole; and where such order is made, all the provisions herein contained in relation to parishes within the meaning of this Act shall be applicable to the parish formed by such combination. (f)

#### LEGAL OBJECTIONS TO FORMATION OF DISTRICT.

##### *Rules as to Objections and Evidence.*

8. No objection shall be made at any trial or in any legal proceeding to the validity of any orders or proceedings relating to the formation of a highway district, after the expiration of three calendar months from the date of the publication in the *Gazette* of the order under which the district is formed; and the production of a copy of the *London Gazette* containing a copy of the order of justices forming a highway district shall be receivable in all courts of justice, and in all legal proceedings, as evidence of the formation of the district and of the matters in the said order mentioned. (g)

the area for the maintenance of the highways and the maintenance of the poor coincident. But now, see the Amending Act 27 & 28 Vict. c. 101, s. 7, which enables the justices to combine one or more townships, &c., into a highway parish without combining the whole; and see also the Amending Act of 1878, s. 3, *post*, p. 181, which requires the justices, in forming highway districts, to have regard to the boundaries of existing rural sanitary districts.

An order combining townships, &c., under the above clause will not so alter the liability to maintain highways as to render the owners or occupiers of lands which have been exempt from highway rates liable to be rated to the repair of highways, see *Reg. v. Heath*, *post*, p. 154.

By the Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113, s. 18), "in all Statutes, except there shall be something in the context inconsistent herewith, the word 'parish' shall, among other meanings applicable to it, signify a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed."

(f) With regard to townships or places, parts of which are included in local government districts, see the Public Health Act, 1875, s. 216 and the Local Government Act, 1861, referred to in that section, in note (z) on p. 129, *post*.

(g) In every Highway Board district, therefore, it will be advisable that a copy of the *London Gazette*, in which the order of justices is published, should be carefully preserved with the records of the Board. This, however, is not absolutely necessary, for see the provision on this subject in 27 & 28 Vict. c. 101, s. 12, *post*, p. 135.

Where orders of justices must be objected to within three months, it is sufficient to obtain a rule for a *certiorari* within that time.—*Reg. v.*

## HIGHWAY BOARD.

*Constitution of Highway Board.*

9. There shall be enacted, with respect to the constitution of the Highway Board in each highway district, the provisions following; (that is to say.)

- (1) The Highway Board shall consist of the waywardens elected in the several places within the district, in manner hereinafter mentioned, (*h*) and of the justices acting for the county and residing within the district: (*i*)
- (2.) The Board shall be a body corporate, by the name of the Highway Board of the district to which it belongs, having a perpetual succession and a common seal, with a power to acquire and hold lands for the purposes of the Highway Acts, without any licence in mortmain: (*j*)
- (3.) No act or proceeding of the Board shall be questioned on account of any vacancy or vacancies in their body: (*k*)

*Lindsey JJ.*, 6 B. & S. 892, 35 L. J. M. C. 90, 13 L. T. (N. S.) 524, 12 Jur. (N. S.) 314.

(*h*) See s. 10, *post*.

(*i*) Where, however, a highway district is or hereafter becomes coincident with a rural sanitary district, the rural sanitary authority may now become the Highway Board for their district; and in that case waywardens will not be elected for the several places in the district, though resident justices, being ex-officio guardians (4 & 5 Wm. IV. c. 76, s. 38), will be members of the Board. See the definition of the word "county" in s. 2, *ante*, and the note thereon. Borough justices, as they do not act for the county, will not be qualified as members of the Highway Board. County justices who have merely a place of business within the district will not be considered as residing therein within the meaning of the enactment. According to Ross's "Parliamentary Record" for 1864, p. 32, Sir George Grey, Secretary of State for the Home Department, stated, in reply to a question put to him in the House of Commons, that magistrates residing in places which were exempted from the operation of the "Highway Act" were not ex-officio members of the District Board. But see the new provision as to the qualification of ex-officio waywardens in 27 & 28 Vict. c. 101, s. 29.

By 1 Mary, st. 2, c. 3, s. 8, no sheriff shall act as a justice of the peace during his shrievalty; consequently a justice of the peace who is sheriff cannot act as an ex-officio member of a Highway Board.

(*j*) As to the purchase of lands, see 27 & 28 Vict. c. 101, s. 53, *post*.

(*k*) Vacancies can only exist amongst the elected waywardens or

- (4.) No defect in the qualification or election of any person or persons acting as member or members of the Board or committee of a Board shall be deemed to vitiate any proceedings of such Board in which he or they have taken part in cases where the majority of members parties to such proceedings are duly entitled to act: (1)
- (5.) Any minute made of proceedings at meetings of the Board or of committees of the Board, if signed by any person purporting to be the chairman of the Board or committee of the Board, either at the meeting of the Board or committee of the Board at which such proceedings took place, or at the next ensuing meeting of the Board or committee of the Board, shall be receivable in evidence in all legal proceedings without further proof; and until the contrary is proved every meeting of the Board or committee of the Board in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified:
- (6.) No member of a Board, by being party to, or executing in his capacity of member, any contract or other instrument on behalf of the Board, or otherwise lawfully exercising any of the powers given to the Board, shall be subject to be tried or prosecuted, either individually or with others, by any person whomsoever; and the bodies or goods or lands of the members shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, tried, or executed by them, or by reason of any other lawful act done by them in execution of any of the powers of the Board; and the members of the Board may apply any moneys in their hands for the purpose of indemnifying themselves against any losses, costs,

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guardians, as the case may be, as all justices acting for the county and residing within the district are ex-officio members of the Board. As to the quorum of members, see proceedings of Highway Boards in the first sch. to 27 & 28 Vict. c. 101, *post*.

(1) This is a similar provision to that contained in the 5 & 6 Vict. c. 57, s. 13, with respect to guardians of poor law unions.

ordamages they may incur in execution of the powers granted to them: (*m*)

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#### ELECTION OF WAYWARDENS.

10. The following regulations shall be observed with respect to the election of waywardens in highway districts: (*o*)

In every parish forming part of a highway district there shall be elected every year for the year next ensuing a waywarden, or such number of waywardens as may be determined by order of the justices: (*p*)

Such waywarden or waywardens shall be elected in every parish forming part of a highway district at the meeting and time and in the manner, and subject to the same qualification and the same power of appointment in the justices in the event of no election taking place, or in the event of a vacancy, at, in, and subject to which a person or persons to serve the office of surveyor would have been chosen or appointed if this Act had not passed: (*q*)

(*m*) This saves members of the Highway Board from personal responsibility, not only in respect of contracts and other instruments executed by them, but also in respect of all other lawful acts done by them in the execution of their powers.

(*n*) This clause, which directed that the rules in the schedule to the Act as to proceedings, &c., should be observed, is repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66, the schedule having been itself repealed by 27 & 28 Vict. c. 101, s. 27, so far as related to proceedings of Highway Boards, and another schedule enacted, which will be found at p. 176, *post*.

(*o*) No waywardens will be elected in a highway district of which the rural sanitary authority have become the Highway Board; see 41 & 42 Vict. c. 77, s. 4, *post*, p. 184.

(*p*) The order of justices here referred to is the order forming the highway district. (See s. 6, subsection 4, *ante*.)

(*q*) 1. *As to the Meeting and Time of Appointment.*—By 5 & 6 Wm. IV. c. 50, s. 6, the inhabitants of every parish maintaining its own highways, at their first meeting in vestry for the nomination of overseers of the poor, or, if there is no such meeting, at their usual place of public meeting, on or within fourteen days after the 25th March, in every year, are to elect one or more persons to serve the office of sur-

The justices shall in their provisional order make provision for the election of a waywarden or waywardens in

veyor of the parish for the year then next ensuing. It is to be observed that no vestry meeting is required by law to be held for the nomination of overseers, who, by 54 Geo. III. c. 91, are to be appointed by the justices on the 25th day of March; or within fourteen days next after that day, in each year. The ordinary way of appointing overseers is by precept from the justices to the high constable to require the overseers to make out a list of persons in the parish liable to serve, from which the overseers are chosen by the justices.—*Reg. v. Hoole*, 2 L. T. (N. S.) 472, S. C. Nom. *Reg. v. Lancashire JJ.* 29 L. J. M. C. 214, shows that the justices may appoint overseers without the nomination of the vestry.

A doubt which had arisen with respect to the above-mentioned section (5 & 6 Wm. IV. c. 50, s. 6), as to whether a surveyor of highways could be appointed for a parish not maintaining any highway, is removed by 41 & 42 Vict. c. 77, s. 25, *post*, p. 211.

2. *As to the Qualification.*—By s. 7 of the 5 & 6 Wm. IV. c. 50, any person living within the parish, or any adjoining parish, and having an estate in houses, lands, tenements, or hereditaments, lying within such parish, in his own right or in right of his wife, of the value of £10 by the year, or a personal estate of the value of £100 (such person not living within the parish being willing to serve the office), or being an occupier or tenant of houses, lands, tenements, or hereditaments (whether resident within the parish or within any adjoining parish) of the yearly value of £20, is eligible to be elected a surveyor of the highways; but no person who is exempted by law from serving the office of overseer is compellable to serve the office of surveyor. By s. 42, sub-section 2, *post*, s. 9 of 5 & 6 Wm. IV. c. 50, as to the appointment of a paid surveyor, shall not apply to any parish within a highway district.

3. *As to Justices' Power of Appointment.*—By 5 & 6 Wm. IV. c. 50, s. 11, in case it shall appear on oath to the justices at a special sessions for the highways (or petty sessions, see 27 & 28 Vict. c. 101, s. 46, p. 165), that the inhabitants of any parish have neglected or refused to nominate and elect a surveyor or surveyors, or that the outgoing surveyor, except he had been directed by the inhabitants so to do, has delivered no statement of the name and residence of his successor (the provision as to the statement of the outgoing surveyor shall not apply to any parish within any district formed under the 25 & 26 Vict. c. 61; see s. 42, subsection 3, *post*), or that he is dead, or has ceased to possess the qualification or has become disqualified, or that he has neglected to act, or refused to carry into operation the duties imposed upon him, the justices are, by writing under their hands, at their next succeeding special sessions for the highways, to dismiss the surveyor, and to appoint any person whom they may think fit to be a surveyor of the parish till the next annual meeting. By s. 42, subsection 8, *post*, however, s. 45 of the 5 & 6 Wm. IV. c. 50, relating to the holding of special sessions for the highways, shall not apply to the Highway Board of any district formed under the 25 & 26 Vict. c. 61. Further with regard to special sessions, see 27 & 28 Vict. c. 101, s. 46, *post*. By 27 & 28 Vict. c. 101,

places where no surveyor or surveyors were elected previously to the place forming part of a highway district: (r)

s. 11, the justices may now, for the purpose of avoiding delay in bringing the Act into operation, appoint by their final order a day on which the first election of waywardens as members of the Highway Board is to take place.

At a meeting of the vestry of a parish on the 25th of February, 1870, to elect a waywarden under 25 & 26 Vict. c. 61, s. 10, and 5 & 6 Wm. IV. c. 50, s. 6, L. and C. were proposed and seconded. The majority of the ratepayers present, counting each as a single vote, were in favour of L.: but it was suggested that the votes ought to be counted by giving each ratepayer the plurality of votes to which he was entitled, and, so counting the votes, the majority was in favour of C. A poll was then demanded on behalf of L., and a poll was appointed to be taken on the 28th February, between ten and two o'clock, at the room in which the vestry was then being held. On the 28th, several ratepayers went to the room to vote; but in consequence of a notice that C. declined to stand, no one went into the room, and no poll whatever was taken. C. was afterwards informed by the chairman of the meeting that he was elected by the votes of the meeting, and the chairman gave him a certificate of his election. Under these circumstances, the Court held that C. was not elected, and that, no poll having been taken after it had been duly demanded, the election was void.—*Reg. v. Cooper*, L. R. 5 Q. B. 457, 39 L. J. Q. B. 273, 35 J. P. 37.

*Quo warranto* will lie for the office of waywarden; and though the district for which he acts be not defined by a known "legal boundary," he must be elected by the inhabitants of that part, and not by those of the whole parish.—*Reg. v. Gascoigne*, 29 J. P. 389. See also *Reg. v. Diz*, 30 J. P. 390.

Where the justices, by their final order, fixed the first day of meeting of the Highway Board for the Thursday after the 25th March, and no day was specially named for the election of waywardens, and according to the custom of the parishes in the district it had been usual to elect highway surveyors on the 25th March, or within two or three days thereafter, it was held that the order was not bad because it did not provide for the fourteen days elapsing after the 25th March, but provided only for five clear days; though it would have been better to give more time. It was further held that where orders of justices must be objected to within three months, it is sufficient to obtain a rule for a *certiorari* within that time.—*Reg. v. Lindsey JJ.* 12 Jur. (N. S.) 314, 6 B. & S. 892, 13 L. T. (N. S.) 524, 35 L. J. M. C. 90.

(r) Before making their provisional order it will therefore be necessary that the justices should ascertain whether a surveyor of highways had previously been elected for any parish proposed to be included in the highway district. See 27 & 28 Vict. c. 101, s. 7, last subdivision and note thereon; and also the last clause of s. 31 of the same Act.

Where a part only of a parish has been included in an urban sanitary district, the Court of Quarter Sessions may by order direct that for the

A waywarden shall continue to act *until his successor is appointed*, and shall be re-eligible. (s)

#### CONSEQUENCES OF FORMATION OF HIGHWAY DISTRICT.

##### *Consequences of Establishment of Highway Board.*

11. At and after the first meeting in any highway district of the Board of such district the following consequences shall ensue: (t)

All such property, real and personal, including all interests, easements, and rights in, to, and out of property, real and personal, and including things in action, as belong to or are vested in, or would but for this Act have belonged to or been vested in, any surveyor or surveyors of any parish forming part of the district, shall pass to and vest in the Highway Board of that district for all the estate and interest of such surveyor or surveyors as aforesaid, but subject to all debts and liabilities affecting the same: (u)

All debts and liabilities incurred in respect of any property transferred to the Highway Board may be

excluded part a waywarden or waywardens shall be elected, and may invest any waywarden elected in pursuance of any such order with all or any of the powers of waywardens under the Highway Acts; 38 & 39 Vict. c. 55, s. 216.

(s) *i.e.*, for election.

By 41 & 42 Vict. c. 77. s. 11, a waywarden is to continue in office until the 30th of April in the year following that in which he was elected, and on that day his successor is to come into office.

(t) A similar transfer of property, &c., to that which is mentioned in this section will take place where a rural sanitary authority has been invested with the powers of a Highway Board; see 41 & 42 Vict. c. 77, s. 5, *post*, p. 184. See also note (l) on 27 & 28 Vict. c. 101, s. 10, *post*, p. 133, as to the holding of the first meeting within the district.

(u) Under this provision all waste land allotted to parishes within the district for the repair of the highways, as well as all other property vested in the surveyor under 5 & 6 Wm. IV. c. 50, s. 41, pass to and become vested in the Highway Board, who will have the same powers with respect to the sale of lands from which the materials have been exhausted as surveyors have under the 5 & 6 Wm. IV. c. 50, s. 48, and 8 & 9 Vict. c. 71, s. 1. See Glen's "Treatise on the Law of Highways," second edition.

Further with reference to this section, see *Wrexham v. Hardcastle*, *post*, p. 121.



enforced against the Board to the extent of the property transferred: (v)

All such powers, rights, duties, liabilities, capacities, and incapacities (except the power of making, assessing, and levying highway rates) as are vested in or attached to, or would but for this Act have become vested in or attached to, any surveyor or surveyors of any parish forming part of the district, shall vest in and attach to the Highway Board: (w)

All property by this Act transferred to the Board shall be held by them upon trust for the several parishes or places now maintaining their own highways within their district to which such property belongs, or for the benefit of which it was held previously to the formation of the district. (x)

(v) This must mean debts and liabilities incurred by the surveyor; if the value of the property be insufficient to defray the debts or liabilities, it is difficult to see in what way they can be recovered or enforced after the surveyor has been superseded by the Highway Board, unless indeed he may have incurred personal liability in respect of them.

(w) As regards this provision, reference must be made to Glen's "Highway Laws," which treats very fully of the various powers and duties of surveyors of highways by 5 & 6 Wm. IV. c. 50, ss. 18 & 19. See also the Powers given to Highway Boards as surveyors of the highways by this Act. As regards a waywarden contracting for the supply or cartage of materials within the parish for which he is waywarden, see 26 & 27 Vict. c. 61, and 27 & 28 Vict. c. 101, s. 20, *post*, p. 139.

A Highway Board passed a resolution that a certain path was a public way, and directed their surveyor to remove the locks from gates that had been placed across the path. An action having been brought for the trespass in removing the locks, it was held that the members of the Board who concurred in the resolution were personally liable, inasmuch as the act done was wholly beyond the competency of the Board, under 5 & 6 Wm. IV. c. 50, to perform, and that the surveyor was also liable as having actually committed the trespass complained of, although he committed it under the orders of the other defendants, professing to act as the Highway Board of the district.—*Mill v. Hawker and Others and Wickett*, 30 L. T. (N. S.) 894, L. R. 9 Exch. 309.

(x) Therefore, all materials, tools, and implements provided for repairing the highways transferred to the Highway Boards by the Act, must be applied and used by the Board for the repair of the roads of the several parishes from the surveyors of which the same was transferred. See also 27 & 28 Vict. c. 101, *post*, as to the expenses of maintaining and keeping in repair the highways of each parish within the district.

## APPOINTMENT OF OFFICERS.

*Power to Highway Board to appoint Officers.*

12. The Highway Board of a district shall, at their first meeting or at some adjournment thereof, by writing under their seal, appoint a treasurer, clerk, and district surveyor; (y) they may also at any meeting, if they think fit, appoint an assistant surveyor; they may from time to time remove any of such officers, and appoint others in the room of such as may be so removed, or as may die or resign; (z) they may also, out of any moneys in their hands, pay such salaries as they think reasonable to the clerk and district and assistant surveyor, and to the treasurer, if they think necessary (a): provided that before

(y) If the appointments be not made at the first meeting, and there should be no adjournment of the meeting, the power to appoint would seem to drop through. It is therefore important, if the Board are not prepared at the first meeting to make the whole of the appointments, that the meeting should not separate without its being adjourned to a future day. As to any default in the appointment of officers, see 27 & 28 Vict. c. 101, s. 45, *post*. By 27 & 28 Vict. c. 101, s. 30, the appointment of any officer may be made by a minute of the Board, signed by the chairman, and countersigned by the clerk of the Board. The stamp duties formerly charged under the Stamp Act, 1870 (33 & 34 Vict. c. 97), on the "admission and appointment or grant by any writing to or of any office or employment," were abolished by 38 Vict. c. 23, s. 14; but the Commissioners of Inland Revenue are understood to have expressed an opinion that the security to be given by the treasurer or any other officer will be liable to the duty of 2s. 6d. per cent. on the amount of the security, but not exceeding 35s.

Two or more Highway Boards may unite in appointing and paying the salary of a district surveyor, who will in relation to the district of each of the Boards by whom he is appointed have all the powers and duties of a district surveyor under the Highway Acts: 41 & 42 Vict. c. 77, s. 6, *post*, p. 186.

The Act gives no power to appoint two persons to act as joint clerks, or to appoint a firm of solicitors as clerks. It would seem, however, from section 15, *post*, that a deputy clerk may be appointed, or rather nominated, by the clerk, and "allowed" by the Board.

(z) Any future appointment of clerk, it would seem, must be made under the seal of the Board, notwithstanding 27 & 28 Vict. c. 101, s. 30, as in his case there will be no clerk to countersign the minute of appointment.

(a) See, however, the provision in 27 & 28 Vict. c. 101, s. 45, as to the salaries of officers appointed by the justices.

the treasurer enter upon his office the Board shall take sufficient security from him for the due performance of the duties of his office; (b) but no appointment, except the first, to any of the offices specified in this section, shall be made unless notice in writing has been sent to every member of the Board. (c)

*Two offices not to be held by the same Person.*

13. Not more than one office of treasurer, clerk, and district or assistant surveyor of the same Highway Board shall be held by the same person, or by persons in partnership with each other, or by persons in the relation of employer and clerk, agent, or servant, one of the other, or of the partner of either of them; and if any person accepts or holds the office of treasurer, clerk, or district or assistant surveyor, contrary to this provision, he shall be liable to a penalty not exceeding £50. (d)

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(b) The nature of the security to be taken from their treasurer, it will be perceived, is left to the discretion of the Highway Board.

(c) The first appointment of an assistant surveyor may be made without notice, as well as the first appointment to any of the other offices.

According to Parliamentary Paper, No. 222, Session 1864, the following question was submitted by a Highway Board to Mr. Justice Manisty when he was a Queen's Counsel: "Is it legal for the Board to pay inspectors to overlook works or contracts, their wages or salary being made a proportionable charge on the parishes within which they act as such inspectors?" The answer was: "I am of opinion that the Board may legally employ such number of persons as they deem necessary for the proper performance of the work which has to be done in each parish or place maintaining its own highways. It is immaterial by what name such persons are called (be it that of inspector, overlooker, foreman, or otherwise); but wages should be paid for their services by the respective parishes or places in which their services are rendered. I do not think it matters whether the wages so paid are measured by an appointed salary or in any other way, so long as each parish or place pays for the services rendered in it." Now, however, it must be remembered, all expenses legally incurred by the Highway Board are to be charged on the district fund and not on the several parishes, see 41 & 42 Vict. c. 77, s. 7, *post*, p. 187.

(d) This section means that each of the several offices specified shall be held by distinct persons, none of whom shall be in partnership one with the other, nor be connected one with the other in the relation of employer and clerk, &c.

*Duties of Treasurer.*

14. The treasurer of each Highway Board shall receive and hold to the account of such Board, all moneys paid to or for the use of such Board, and shall make payments thereout under orders of such Board, and shall once in every three months, on or at such days or times as the Board may direct, or oftener if required by the Board, make up an account of all moneys received and paid by him, and deliver the same to the clerk of the Board.

*Duties of Clerk.*

15. The clerk of every Highway Board shall in person, or by such deputy as may be allowed by such Board, attend all meetings of the Board, and shall conduct the correspondence thereof, and enter and keep, in books to be provided for the purpose, notes, minutes, or copies, as the case may require, of the meetings, acts, orders, resolutions, proceedings, and correspondence of such Board, and shall keep all books, papers, and documents committed to his charge, and shall perform all such other duties as the Board may direct. (e)

*Duties of District Surveyor.*

16. The district surveyor shall act as the agent of the Board in carrying into effect all the works and performing all the duties by this Act required to be carried into effect or to be performed by the Board, and he shall in all re-

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(e) The Act omits to give the Highway Board express authority to provide a board-room for their meetings, or offices for the transaction of the business of the district. The clerk, it is presumed, will provide his own office in consideration of his salary; and the use of a board-room may be paid for under s. 20, *post*, and charged to the district fund as a necessary expense incurred by the Board for the common use or benefit of the several parishes within the district. It seems doubtful to what extent the powers given to Highway Boards as surveyors of the highways by 5 & 6 Wm. IV. c. 50, ss. 18 & 19, will be transferred to the new Highway Boards, especially the power given by the latter section as to the purchase of ground or premises for the keeping of the implements and materials necessary for the repair of the highways, or for preparing the same. As to the Deputy Clerk, see note to section 12, *ante*, p. 96.

spects conform to the orders of the Board in the execution of his duties, and the assistant surveyor, if any, shall perform such duties as the Board may require, under the direction of the district surveyor.

## WORKS AND DUTIES OF BOARD.

### *Board to Maintain Highways.*

17. The Highway Board shall maintain in good repair the highways within their district, and shall, subject to the provisions of this Act, as respects the highways in each parish within their district, perform the same duties, have the same powers, and be liable to the same legal proceedings as the surveyor of such parish would have performed, had, and been liable to if this Act had not passed. (f) It shall be the duty of the district surveyor

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(f) The duties and powers of the surveyor in relation to the management of the highways will be found fully set out in Glen's "Highway Laws."

A Highway Board may make and enforce an agreement with a gas company that they may dig up highways for the purpose of laying down gas pipes, and pay at per yard for the surface broken. Declaration—that it was agreed between plaintiffs (a Highway Board) and defendants, that if plaintiffs would allow defendants to open a highway within the jurisdiction of plaintiffs, defendants would make good the surface and pay one shilling per yard of the highway opened, that the licence was given and acted upon, and neither the surface made good by the defendants, nor the one shilling per yard paid:—Held, on demurrer, a good declaration; that the forbearance of plaintiffs to interfere, and their submission to the risk of having to repair the highway themselves, amounted each of them to a sufficient consideration for the agreement, and, further, that the consideration was not illegal, as the performance of the agreement by defendants did not necessarily involve a nuisance to the highway.—*Edgware Highway Board v. Harrow District Gas Company*, L. R. 10 Q. B. 92; 44 L. J. M. C. 16, 31 L. T. (N. S.) 402.

Where a person lays down water pipes under a highway without the permission of the owners of the soil of the highway, a court of equity will, at the instance of one of such owners, grant a mandatory injunction restraining the trespasser from allowing the pipes to remain there, although the work had been completed before the filing of the bill, and will not require the plaintiff in the first instance to establish his right by an action at law.—*Goodson v. Richardson*, 30 L. T. (N. S.) 142.

The omission to repair a bridge was held to come within the words

to submit to the Board at their first meeting in every year, (g) an estimate of the expenses likely to be incurred during the ensuing year (h) for maintaining and keeping in repair the highways in each parish within the district of the Board, and to deliver a copy of such estimate as approved or modified by the Board so far as the same relates to each parish to the waywarden of such parish.

*Proceedings where Roads are out of Repair.*

18. Where complaint is made to any justice of the peace (j) that any highway within the jurisdiction of the Highway Board is out of repair, the justice shall issue two summonses, the one addressed to the Highway Board and the other to the waywarden of the parish liable to the repair of such highway, (k) requiring such Board and waywarden to appear before the justices at some petty sessions, in the summons mentioned, to be held in the division where such highway is situate; (l) and at such

"anything done in pursuance of or under the authority of this Act," in 5 & 6 Wm. IV. c. 50, s. 109, and therefore an action against a Highway Board for such non-repair commenced after the three months limited by that section was too late.—*Holland v. Northwich Highway Board*, 34 L. T. (N. S.) 137.

(g) The first meeting in every year will be that which is held after the annual election of waywardens. See section 10, *ante*, and note thereon.

(h) That is to say, during the year which is to follow such first meeting of the Board, or which shall have then commenced.

By 41 & 42 Vict. c. 77, s. 9, *post*, p. 189, the accounts of every Highway Board shall be made up in such form as the Local Government Board may prescribe, and balanced to the 25th March in every year. By s. 7 of the same Act, the expenses are to be charged on the common fund and not on the parishes separately.

(j) Complaint may also be made to the county authority, that is, the justices at quarter sessions, that a Highway Board, surveyor of highways, or an urban sanitary authority other than the town council of a borough having a separate court of quarter sessions, has made default in maintaining or repairing all or any of the highways within their jurisdiction, and in such case the performance of the duty of the defaulting authority may be enforced in the manner provided by 41 & 42 Vict. c. 77, s. 10, *post*, p. 196.

(k) With regard to the repair of turnpike roads in certain cases by the Highway Board, see 27 & 28 Vict. c. 101, s. 22 and note (r) thereon, *post*, p. 142.

(l) By s. 38, *post*, no justice of the peace shall act as such in any matter in which he has already acted as a member of the Highway

petty sessions, unless the Board undertake to repair the road to the satisfaction of the justices, or unless the waywarden deny the liability of the parish to repair, (m) the justices shall direct the Board to appear (n) at some subsequent petty sessions to be then named, and shall either appoint some competent person to view the highway, and to report to them on its state at such other petty sessions, or fix a day, previous to such petty sessions, at which two or more of such justices will themselves attend to view the highway.

At such last-mentioned petty sessions, if the justices are satisfied, either by the report of the person so appointed, or by such view as aforesaid, that the highway complained of is not in a state of complete repair, it shall be their duty to make an order on the Board limiting a time for the repair of the highway complained of; (o) and if

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Board, and in which the decision of such Board is appealed against. As, however, proceedings under this section are not in the nature of an appeal against any decision of the Highway Board, it would seem that a justice who is a member of the Board is not disqualified from acting in proceedings to compel the repair of a highway within the district. It will be seen (s. 9, subsection 1, *ante*) that all justices acting for the county and residing within the district are members of the Highway Board; and as the proceedings under s. 18 are to take place at the petty sessions held in the division where the highway which is out of repair is situated, it must necessarily follow that all the justices for the county acting at that petty sessions will be members of the Highway Board. But, now, see the provision in 27 & 28 Vict. c. 101, s. 46.

(m) Section 19 provides for the case in which the liability to repair is disputed. Under the 5 & 6 Wm. IV. c. 50, s. 95, the surveyor on behalf of the parish denied the duty or obligation to repair.

Where, under 25 and 26 Vict. c. 61, s. 18, the waywarden appears before the justices and denies that the road is a highway, and that point is *bonâ fide* disputed, and the justices overrule the objection to their jurisdiction, the Queen's Bench will review the finding of the justices; and if satisfied that their decision was wrong on the question of highway or no highway, the Court will quash the order of justices directing the Highway Board to repair the highway.—*Reg. v. Odell*, 34 J. P. 534; and see *Reg. v. Farrar*, *post*, p. 103.

(n) By s. 9, subsection 2, *ante*, the Highway Board is incorporated; but the latter part of the present section enables the Board to appear before the justices at petty sessions by their district surveyor or clerk, or any member of the Board.

(o) The justices must be *satisfied* either upon their own view, or upon the report of their viewer, that the highway is not in a state of complete repair. They are not bound to act upon the report of their viewer, but may act upon their own discretion in making an order on the Highway

such highway is not put in complete and effectual repair by the time limited in the order, the justices in petty sessions shall appoint some person to put the highway into repair, and shall by order direct that the expenses of making such repairs, together with a reasonable remuneration to the person appointed for superintending such repairs, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the Board; and any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, (p) in the same manner as if it were an order of general or quarter sessions, and be enforced accordingly. (q)

All expenses so directed to be paid by the Board in respect of the repairs of any highway shall be deemed to be expenses incurred by the Board in repairing such highway, and shall be recovered accordingly. (r)

The Highway Board may appear before the justices at petty sessions by their district surveyor or clerk, or any member of the Board. (s)

*When Obligation to repair is disputed.*

19. When, on the hearing of any such summons respecting the repair of any highway, the liability to repair is

Board.—*Reg. v. Wills, JJ.*, 8 Dowl. P. C. 717. S. C. nom. *Reg. v. Earl Radnor*, 4 Jur. 460.

(p) Now the Queen's Bench Division of the High Court of Justice.

(q) That is by *certiorari*, which must be applied for within six months after the date of the order.

(r) As to the expenses of the Board, see 27 & 28 Vict. c. 101, s. 32, *et. seq., post*, p. 149.

(s) Under s. 18 of 25 & 26 Vict. c. 61, two summonses are to be issued; one to the Highway Board, and one to the waywarden of the parish, requiring *both* to appear at the sessions. The Board will appear by their district surveyor, clerk, or by any member of the Board; and the waywarden must appear to represent the parish, though it seems that he may appear for the Board also. However, when the parties are before the justices under s. 18, the Board must undertake to repair the road, or submit to proceedings under the section. Under ss. 18 & 19 it is the waywarden alone that can deny the liability of the parish to repair—The Board cannot do so. If the waywarden does not deny the liability of the parish, and the Board will not undertake to repair, then the justices are to proceed as directed by s. 18.



denied by the waywarden on behalf of his parish, or by any party charged therewith, the justices shall direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpoenaed, at the next assizes to be holden in and for the said county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein such highway is situate, against the inhabitants of the parish, or the party charged therewith, for suffering and permitting the said highway to be out of repair; and the costs of such prosecution shall be paid by such party to the proceedings as the court before whom the case is tried shall direct, and if directed to be paid by the parish shall be deemed to be expenses incurred by such parish in keeping its highways in repair, and shall be paid accordingly. (t)

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(t) As regards the enforcement by indictment of the repair of a highway, see Glen's "Highway Laws," second edition. It will be seen that the 27 & 28 Vict. c. 101, ss. 38-43, *post*, provides for an appeal against the order of the Highway Board to repair a highway not repairable by the parish.

The Court of Queen's Bench held that the power of justices under s. 19 of 25 & 26 Vict. c. 61 to direct a bill of indictment to be preferred for the non-repair of a highway only applies to cases where the liability to repair an *admitted* highway is disputed; and therefore where, upon the hearing of a summons for the non-repair of a highway, the waywarden of the parish admitted that it was out of repair, and did not dispute the liability of the parish to repair it, if it was in fact a common highway, while denial was made *bonâ fide*, and the justices therefore refused to order a bill of indictment to be prepared as having no jurisdiction to do so, the Court held that the justices were right. The expression in s. 19 *supra*, "when the liability to repair is denied," is to bear the same construction as the expression "if the duty or obligation of such repairs is denied" in s. 95 of 5 & 6 Wm. IV. c. 50. —*Reg. v. Farrar*, L. R. 1 Q. B. 558, 7 B. & S. 554, 35 L. J. M. C. 210, 14 L. T. (N. S.) 575. In the case of *Reg. v. Buckland* (34 L. J. M. C. 178), it was held that the Court had no power to order costs where, on the trial of an indictment ordered by justices under 25 & 26 Vict. c. 61, s. 19, for the non-repair of an alleged highway, the road was found not to be a highway.

With reference to this section, *Reg. v. James* (32 L. J. M. C. 211, 3 B. & S. 901, 9 Jur. (N. S.) 1126), may also be referred to. In that case, where, on the hearing of a summons under s. 40 of the South Wales Highway Act (23 & 24 Vict. c. 68), against the district surveyor of highways for non-repair of a highway in a parish, the liability to repair is disputed on behalf of the parish, the justices have power to direct an indictment to be preferred under s. 95 of 5 & 6 Wm. IV. c. 50.

See also *ex parte Bartlett* (30 L. J. M. C. 65), which was a decision

## EXPENSES. (u)

20. *Expenses, how charged.*
21. *Mode of defraying expenses.*
22. *Provision where parish as defined by Act not co-extensive with parish maintaining its own poor.*
23. *Power to overseers, &c., to levy rates for making payments to Highway Board.*
24. *Mode of enforcing payments to Highway Boards.*

## ACCOUNTS. (v)

25. *Accounts to be made up to 25th March, and statement to be published.*
26. *Power to appeal in respect of account of Board.*

*Clerk of Highway Board to transmit Statement to Secretary of State (w)—Penalty for Neglect.*

27. The Clerk to every Highway Board shall, within such thirty days after the said audit, (w) transmit such statement to one of Her Majesty's principal Secretaries of State; (x)

on ss. 94, 95 of the Highway Act, 1835; and *Williams v. Adams* (31 L. J. M. C. 190; 5 L. T. (N. S.) 790; 8 Jur. (N. S.) 816; 2 B. & S. 312), on s. 73 of the same Act.

(u) Sections 20–24 of this Act are repealed by 27 & 28 Vict. c. 101, s. 32 (*post*, p. 149), and further provisions are thereby made.

(v) Sections 25, 26, & 30 of this Act are repealed by 27 & 28 Vict. c. 101, s. 36 (*post*, p. 156). See also 41 & 42 Vict. c. 77, s. 9, *post*, p. 189.

(w) See 27 & 28 Vict. c. 101, s. 36, and notes thereon, *post*, p. 156.

(x) Now the Local Government Board, see 38 & 39 Vict. c. 55, Sch. V, part iii., *post*, p. 280.

The Local Taxation Returns Act, 1877 (40 & 41 Vict. c. 66), provides as follows:—

Sec. 1. The annual return required by law to be made of any receipts or expenditure of a local authority, or of any rates, taxes, tolls, or dues, shall be made for the financial year ending on the twenty-fifth day of March, or on such other day as the Local Government Board may from time to time prescribe, upon the application of any particular authority, in respect of their receipts and expenditure, or of any rates, taxes, tolls, or dues levied by them, or in respect of the receipts and expenditure and of the rates, taxes, tolls, or dues levied by any class of authorities. Every such return shall be sent to the Local Government Board and not to one of Her Majesty's Principal Secretaries of State, and shall be sent within one month after the audit of the receipts and expenditure to which the return relates is completed, or if the audit is not completed within six months after the end of the financial year for which the

and any such clerk who shall not within the time afore-said transmit the said statement to the said *Secretary*

return is to be made, then on the expiration of such six months, or if there is no audit, then within one month after the end of the said financial year. For the purpose of any such return the date to which the accounts of any local authority are required by law to be made up, and the date at which such accounts are required by law to be audited, and auditors are required to be elected or appointed, may be altered by the local authority, with the approval of the Local Government Board: Provided that nothing in this section shall prevent any accounts being made up and audited at shorter periods than twelve months, so that one of such shorter periods ends on the last day of the financial year for which the return of such accounts is to be made.

Sec. 2. Every return to which this Act applies shall be made by the clerk of the local authority, or where no clerk is appointed or acting, by the treasurer or other officer keeping the accounts of the receipts and expenditure, rates, taxes, tolls, or dues, to which the return relates, and any such clerk, treasurer, or other officer who makes default in making any such return shall be liable to a penalty not exceeding twenty pounds for each offence, to be recovered by action on behalf of Her Majesty in the High Court of Justice.

Sec. 3. The expression "local authority" in this Act means any justices, municipal or other corporation, board, guardians, sanitary authority, vestry, commissioners, inspectors, trustees, or other body of persons required by law to make to one of Her Majesty's Principal Secretaries of State, or to the Local Government Board, a return of their receipts and expenditure, or of any rates, taxes, tolls, or dues levied by them or under their direction.

Sec. 4. The first return under this Act shall be made for the financial year ending in the year one thousand eight hundred and seventy-eight, and the Local Government Board shall make such provision as may seem to them necessary for any change of the date of the accounts and audit of the accounts of any local authority which may be rendered necessary by the provisions of this Act, so as to cause as little inconvenience as possible to the local authority.

Sec. 5. This Act may be cited as the Local Taxation Returns Act, 1877.

In pursuance of 40 & 41 Vict. c. 86, s. 4, above quoted, the Local Government Board have issued an order dated the 20th March, 1878, to the several Highway Boards named in the Schedule, reciting that each of the Boards, being a local authority within the meaning of the Act, has altered the date to which the accounts of such Board are required by law to be made up, from the 31st day of December to the 25th day of March in each year, and continuing as follows:—

"Now therefore, we, the Local Government Board, in pursuance of the powers given by the said Act in that behalf, do hereby approve of the said alteration; and with respect to the accounts of the several Highway Boards named in the schedule to this order, which under section 36 of the 'Highways Act, 1864,' would be made up and balanced to the 31st day of December, 1877, we do by this our order direct that such

*of State shall for every such offence, upon a summary*

accounts shall be made up and balanced to the 25th day of March, 1878; and that the said accounts shall, as far as practicable, show separately the receipts and expenditure between the 31st day of December, 1876, and the 25th day of March, 1877; and that for the purposes of such accounts, and the audit thereof, the 25th day of March shall be substituted for the 31st day of December in relation to that section."

**SCHEDULE. (*List of Highway Boards.*)**

*Bedford.*—Bedford, Biggleswade, Bletsoe, Luton, Woburn.

*Berks.*—Abingdon, Easthampstead, Faringdon, Ilsey, Moreton, Wantage, Wokingham.

*Cambridge.*—Arrington and Caxton.

*Chester.*—Audlem, Broxton (East), Broxton (West), Bucklow (East), Daresbury, Eddisbury (East), Eddisbury (West), Nantwich, Northwich, Prestbury, Stockport and Hyde, Wirral.

*Cornwall.*—Camborne, Helston (North), Helston (South), Launceston, Penzance, St. Austell, St. Columb, Stratton, Trecau Gate, Tregony, Tywardreath.

*Cumberland.*—Alston, Bootle, Brampton, Whitehaven, Wigton.

*Devon.*—Axminster, Barnstaple, Bideford, Chulmleigh, Crediton, Cullompton, Great Torrington, Hatherleigh, Holsworthy, Honiton, Kingsbridge, Lifton, Newton Abbot, Ottery, Southmolton, Tavistock, Totnes, Wonford, Woodbury.

*Dorset.*—Blandford, Bridport, Cerne, Dorchester, Sherborne, Wareham, Wimborne.

*Durham.*—Auckland, Barnard Castle, Castle Eden and Seaham, Darlington, Durham and Chester-le-Street, Gateshead and South Shields, Houghton-le-Spring and Sunderland, Lanchester, Stockton and Hartlepool, Weardale.

*Essex.*—Billericay, Chelmsford, Heddingham, Rochford, Romford, Winstree and Lenden.

*Gloucester.*—Badgworth, Berkeley, Campden, Cirencester, Dursley, Fairford, Gloucester, Lawford's Gate, Lydney, Moreton-in-Marsh, Northleach, Sodbury, Stow-on-the-Wold, Stroud, Tetbury, Thornbury, Wheatenhurst, Winchcomb, Wotton-under-Edge.

*Hants.*—Alresford, Alton, Andover, Basingstoke, Catherington, Christchurch, Droxford, Fareham, Fordingbridge, Hartley Wintney, Havant, Headley, Hursley, Kingsclere, Lyminster, Petersfield, Ringwood, Romsey, South Stoneham, Stockbridge, Whitechurch, Winchester.

*Hereford.*—Dore, Hereford, Kington, Ledbury, Leominster, Ross, Weobley, Wigmore.

*Herts.*—Buntingford, Hadham, Hatfield, Hertford, Hitchin, Watford.

*Huntingdon.*—Hurstingstone, Norman Cross, Toseland.

*Kent.*—Appledore, Ashford, Cranbrook, Dartford, Elham, Faversham, Home, Hoo, Malling, Rochester, Sevenoaks, Sheppey, Thanet (Isle of), Tonbridge, Wingham.

*Lancaster.*—Cartmel, Flixton, Urmston and South Barton, Leyland, Ormskirk, Prescott, Sefton, Southport, Warrington.

conviction for the same before two justices of the peace, be liable to a penalty not exceeding ten pounds.

*Abstract of Statements to be laid before Parliament.*

28. The *Secretary of State* (x) shall cause the statements so transmitted to be abstracted, and the abstracts thereof to

*Leicester*.—Ashby-de-la-Zouch, Belvoir, East Norton, Leicester, Loughborough, Market Bosworth, Market Harborough, Melton Mowbray.

*Lincoln*.—Axholme (Isle of), Gainsborough.

*Middlesex*.—Edgware.

*Monmouth*.—Abergavenny, Caerleon, Chepstow, Christchurch, Monmouth and Skenfrith, Newport, Pontypool and Usk, Raglan and Trelleck.

*Northampton*.—Brackley, Irthlingborough, Kettering, Kingscliffe, Little Bowden, Thrapston, Towcester, Weedon.

*Northumberland*.—Allendale, Alnwick, Belford, Felton, Glendale, Haltwhistle, Norham and Islandshires, Rothbury, Whittingham.

*Nottingham*.—Bingham, Newark, Nottingham, Ollerton, Retford, Rushcliffe, Southwell.

*Oxford*.—Bampton (East), Bampton (West), Banbury and Bloxham, Bicester, Bullington, Chadlington, Watlington, Wootton.

*Salop*.—Albrighton, Bishop's Castle, Bridgnorth, Cleobury Mortimer and Kidderminster, Ludlow, Newport, Oswestry, Pimhill, Wem, Wrekin.

*Somerset*.—Axbridge, Bridgwater, Clutton, Crewkerne, Dulverton, Dunster, Frome, Ilminster, Keynsham, Langport, Shepton Mallet, Taunton, Weston, Yeovil.

*Suffolk*.—Hartismere, Lavenham, Mildenhall, Wickhambrook.

*Surrey*.—Blackheath, Croydon, Dorking, Epsom, Farnham, Godalming, Godstone, Guildford, Kingston, Mortlake, Reigate.

*Sussex*.—Hastings, Mark Cross, Rye.

*Warwick*.—Alcester, Kineton, Stratford-upon-Avon.

*Wils.*—Amesbury, Chippenham, Cricklade, Devizes, Everley and Pewsey, Hindon, Malmesbury, Marlborough, Salisbury, Swindon, Trowbridge, Warminster.

*Worcester*.—Evesham, Kidderminster, Martley, Shipston-on-Stour, Tenbury, Upton-on-Severn.

*York (North Riding)*.—Askrigg, Birdforth, Bulmer (East), Bulmer (West), Hang (East), Langbaugh (East), Langbaugh (West), Malton, Northallerton, Pickering, Lythie (East), Ryedale, Whitby Strand. (*West Riding*).—Lower Strafforth and Tickhill, Pontefract, Settle.

*Denbigh*.—Llanrwst, Wrexham.

*Montgomery*.—Llanfyllin, Machynlleth, Newtown and Llanidloes, Welshpool and Forden.

(x) Now the Local Government Board. See 38 & 39 Vict. c. 55, Sch. V, part iii, *post*, p. 280.

be laid before both Houses of Parliament, with the other statements in relation to highways required to be abstracted and laid before Parliament by the Act of the session holden in the twelfth and thirteenth years of Her Majesty, chapter thirty-five. (y)

*Secretary of State (x) may cause Form of Statement to be prepared.*

29. It shall be lawful for *one of Her Majesty's principal Secretaries of State (x)* to cause to be prepared such forms for such statement as *he* may from time to time deem suitable, and also from time to time to alter the forms for the annual statement prescribed by the said Act of the twelfth and thirteenth years of Her Majesty, but no statement shall be transmitted under that Act concerning parishes wholly within a highway district under this Act. (z)

30. *Quarterly account to be sent to overseers. (a)*

*Officers appointed by Highway Board to account to them when required.*

31. All officers appointed by the Highway Board shall, as often as required by them, render to them or to such persons as they appoint a true, exact, and perfect account in writing under their respective hands, with the proper vouchers, of all moneys which they may respectively to the time of rendering such accounts have received and disbursed on account or by reason of their respective offices, and in case any money so received by any such officer remains in his hands the same shall be paid to the

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(y) With respect to these statutes, see Glen's "Highway Laws," second edition.

(z) Now the Local Government Board. See 38 & 39 Vict. c. 55, Sch. V, part iii., *post*, p. 280.

(z) This section is similar to s. 31 of the South Wales Highway Act, 23 & 24 Vict. c. 68.

(a) Repealed by 27 & 28 Vict. c. 101, s. 36, *post*.

Board, or to such person or persons as they in writing under their hands empower to receive the same; and if any officer refuses or wilfully neglects to render and give such account, or to deliver up such vouchers, or for the space of fourteen days after being thereunto required by the Board refuses or wilfully neglects to give up to them or to such person or persons as they appoint all books, papers, writings, tools, and things in his hands, custody, or power relating to the execution of his office, it shall be lawful for any justice of the peace for the county where the officer so making default is or resides, upon application made to him for that purpose by or on behalf of the Board, to make inquiry of and concerning any such default as aforesaid in a summary way, as well by the confession of the party as by the testimony of any creditable witness or witnesses upon oath, and by warrant under his hand and seal to cause such money as may appear to him to be due and unpaid to be levied by distress and sale of the goods and chattels of such officer, rendering to him the overplus (if any), on demand, after payment of the money remaining due and deducting the charges and expenses of making such distress and sale; and if sufficient distress cannot be found, or if it appears to any such justice in manner aforesaid that any such officer has refused or wilfully neglected to give such account, or to deliver up all books, papers, writings, tools, matters, and things in his custody or power relating to the execution of his office, the justice shall commit him to the house of correction or common gaol of the county where such offender is or resides, there to remain without bail until he gives a true and perfect account and verifies the same in manner aforesaid, and produces and delivers up the vouchers relating thereto, and pays the money (if any) remaining in his hands as aforesaid according to the direction of the Board, or has compounded with the Board for such money and paid such composition (which composition the Board are hereby empowered to make and receive), or until he delivers up such books, papers, and writings, tools, matters, and things as aforesaid, or has given satisfaction to the Board concerning the same; but no officer who may be committed on account of his not having sufficient goods and chattels as aforesaid shall be

prison by virtue of this Act for any longer  
ix calendar months (b)

#### SUPPLEMENTAL PROVISIONS.

##### *Provision as to Extra-parochial Places.*

32. Where in pursuance of an Act passed in the twentieth year of the reign of her present Majesty, chapter nineteen, and intituled "An Act for the Relief of the Poor in Extra-parochial Places," any place is declared to be a parish, or where overseers of the poor are appointed for any place, such place shall for the purposes of this Act be deemed to be a parish separately maintaining its own highways; and where in pursuance of the same Act any place is annexed to any adjoining parish, or to any district in which the relief of the poor is administered under a local Act, such place shall for the purposes of this Act be deemed to be annexed to such parish or district for the purposes of the maintenance of the highways, as well as for the purposes in the said Act mentioned. (c)

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(b) It will be observed that in this section the word "officers" is mentioned throughout. If an officer does not conform to the requirements of the Highway Board, he may be at once removed by the Board under s. 12, *ante*. Doubtless the intention was to compel persons who may have ceased to be "officers" to render an account and to pay over and deliver up all money and other things belonging to the Highway Board in their possession; but how far the section will be applicable to a person who has ceased to be an "officer" is open to doubt. If the person proceeded against is still an "officer," no question can arise as to his accountability under the section.

(c) In his "Highway Laws" Mr. W. C. Glen pointed out that the Act 20 Vict. c. 19 parochialized places which were formerly extra-parochial, for the purposes of assessment to the poor rate, the relief of the poor, the county police or borough rate, the burial of the dead, the removal of nuisances, the registration of Parliamentary and municipal voters, and the registration of births and deaths but that the Act did not in any way apply to highways; and he showed that the inhabitants of an extra-parochial place were not on any general principle of law liable to repair the highways within it. The Bill which has become the present Act, when originally introduced, was framed without any reference to the provisions of the 20 Vict. c. 19; but Mr. Glen having called the attention of the Secretary of State to the difficulties which would most likely arise if the clause should pass as it was originally drawn the present clause, after a conference at the



*Provision for outlying Part of Parishes.*

33. Where part of a parish is not contiguous to the parish of which it is a part, such outlying part may at the discretion of the justices be annexed to a district, and, when so annexed, it shall, for all the purposes of the Highways Acts, be deemed to be a parish separately maintaining its own highways. (d)

*Expenses of repair of Highways may be recovered from Party liable to repair ratione tenuræ.*

34. Where any highway which any body politic or corporate or person is liable to repair by reason of tenure of any

Home Office on the subject, was substituted. The first part of the section refers to s. 1 of the 20 Vict. c. 19, and the latter part to ss. 4 and 8 of that Act.

The section, however, only makes the place a highway parish liable to be included in a highway district under the Act, and does not impose upon it the general common law liabilities of a parish in respect of highways, so as to render it liable to indictment for non-repair of a highway within it; *Reg. v. Inhabitants of Central Wingland*, L. R. 2 Q. B. D. 349; 36 L. T. (N. S.) 798.

Further, with regard to this section, see 27 & 28 Vict. c. 101, s. 9, and note thereon; and with regard to places which do not in point of fact maintain any highways, see 41 & 42 Vict. c. 77, s. 25, *post*, p. 211.

(d) When or how the justices are to exercise their "discretion" under this section is not apparent. Probably they will do so when they form the highway district in the manner provided for by ss. 5, 6, *ante*. If, however, they do not then exercise their discretion, it is difficult to see when or in what way they are to do so. However, whenever the discretion is exercised, the outlying part of the parish will become a separate highway parish; and in that case the waywarden will have to levy a highway rate in it; see 27 & 28 Vict. c. 101, s. 33, *post*, p. 151. If the outlying part of a parish be not dealt with by the justices under this section, it will remain as before an outlying part of the mother parish.

The Local Government Board are now authorised by the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61, s. 1), to issue an order constituting separate parishes out of a divided parish, or amalgamating parts of it with the parishes in which they are locally included. And, by s. 5 of the same Act: "Where a parish affected by the order shall be included in a highway district, its condition therein and the appointment of the waywarden thereof shall be changed according to the terms of the order, whether its area or contents be diminished or increased thereby:" provision is made by s. 7 of the Act for compensating persons who are deprived of office or emolument, or whose profits are diminished.

land, or otherwise howsoever, \*shall be adjudged in the manner provided by *the principal Act* to be out of repair,\* (e) the Highway Board of the district in which such highway is situate may, if they see fit, direct their surveyor to repair the same, and the expenses to be incurred in such repair shall be paid by the party liable to repair as aforesaid; and it shall be lawful for any justice, upon the application of any person authorized in this behalf by the Highway Board, to summon the party liable to pay such expenses to appear before two justices at a time and place to be named in such summons, and upon the appearance of the parties, or in the absence of either of them, it shall be lawful for such justices to hear and determine the matter, and make such order, as well as to costs or otherwise, as to them may seem just. (f)

*Highways repairable ratione tenuræ may be made repairable by the Parish.*

35. Where any person or corporation is liable, by reason of tenure of lands or otherwise, to repair any highway situate in a highway district, the person or corporation (g) so liable may apply to any justice of the peace for the purpose of making such highway a highway to be repaired and maintained by the parish in which the same is situate; and such justice shall thereupon issue summonses requiring the waywarden of such parish, the district surveyor, and the party so liable to repair such highway as aforesaid, to appear before two or more justices in petty sessions assembled, and the justices at such petty sessions shall proceed to examine and determine the matter, and shall, if they think fit, make an order under their hands that such highway shall thereafter be a highway to be there-

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(e) The words in this section between asterisks shall be construed as if, instead of those words, the following words were substituted:—“Shall be adjudged in manner provided by the Highway Act, 1862, to be out of repair;” see 27 & 28 Vict. c. 101, s. 23. As regards the provisions of the Highway Act, 1862, on this point, see s. 18, *ante*.

(f) This section is similar in its provisions to the South Wales Highway Act, 23 & 24 Vict. c. 68, s. 36; see also 5 & 6 Wm. IV. c. 50, s. 62, in Glen’s “Highway Laws.”

(g) Or the Highway Board, see 27 & 28 Vict. c. 101, s. 24.

after repaired and maintained by the parish, and shall in such order fix a certain sum to be paid by such person or corporation to the Highway Board of the district, in full discharge of all claims thereafter in respect of the repair and maintenance of such highway; and in default of payment of such sum the Board may proceed for the recovery thereof in the same manner as for the recovery of penalties or forfeitures recoverable under this Act; Provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair and maintenance of such highway exceeds fifty pounds the same, when received, shall be invested in the name of the Highway Board of the district in some public Government securities, and the interest and dividends arising therefrom shall be applied by such Board towards the repair and maintenance of the highways within the parish in which such highway is situate; but when such sum does not exceed fifty pounds the same or any part thereof, at the discretion of such Highway Board, shall from time to time be applied by such Board towards the repair and maintenance of the highways within such parish: Provided that any person aggrieved by any order of justices made in pursuance of this section may appeal to a court of general or quarter sessions holden within four months from the date of such order; but no such appeal shall be entertained unless the appellant has given to the other party to the case a notice in writing of such appeal, and of the matter thereof, within fourteen days after such order, and seven clear days at the least before such sessions, and has entered into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as may be by the court awarded; and upon such notice being given, and such recognizance being entered into, the court at such sessions shall hear and determine the matter of the appeal, and shall make such order thereon, with or without costs to either party, as to the court may seem meet:

From and after the making of such order by the justices, or by the court on appeal, as the case may require, such highway shall be repaired in like manner

and at the like expense as highways which a parish is liable to repair. (h)

*[Provision as to Roads laid out.*

36. Where the inhabitants of any parish are desirous of undertaking the repair and maintenance of any driftway, (i) or any private carriage or occupation road, within their parish, in return for the use thereof, the district surveyor may, at the request of the inhabitants of such parish assembled in a vestry duly convened for the purpose, and with the consent in writing of the owner and the occupier of every part thereof, apply to the justices in petty sessions to declare such driftway or road to be a public highway to be repaired at the expense of the parish; and upon such application being made it shall be lawful for the justices to declare the same to be a public carriage road to be repaired at the expense of the parish. (j)

*Surveyor of Highway Board exempted from Turnpike Tolls.*

37. No toll shall be demanded by virtue of any Act of Parliament on any turnpike road from the surveyor of a Highway Board when executing or proceeding to execute his duties as such surveyor, and all provisions applicable to the exemptions in the Act of the third year of King George the Fourth, chapter one hundred and twenty-six, shall apply to the case of the exemptions conferred by this enactment. (k)

(h) With reference to the provisions of this section, see Glen's "Highway Laws," second edition, and 5 & 6 Wm. IV. c. 50, s. 62, and 23 & 24 Vict. c. 68, s. 37. Note, however, the limitation in these two Acts as to the amounts therein mentioned—namely, £100; in the present Act, the limitation is £50 only.

See also note (j), *infra*.

(i) A "driftway" is a way which the public have a right to use either on foot or horseback, and is called a pack and prime, or drift or bridleway.

(j) After the 25th March, 1879, notwithstanding anything in the Highway Acts, the expenses incurred by the Highway Board in keeping in repair the highways of each parish in their district, will be payable out of the common fund, instead of being charged on the parish: 41 & 42 Vict. c. 77, s. 7, *post*, p. 187.

(k) The provisions of the General Turnpike Act, 3 Geo. IV. c. 126, here referred to, are the following, viz.:—

*Limiting Jurisdiction of Justices.*

38. No justice of the peace shall act as such in any matter in which he has already acted as a member of the Highway Board, and in which the decision of such Board is appealed against. (1)

Sec. 32. "No toll shall be demanded or taken by virtue of this or any other Act or Acts of Parliament on any turnpike road . . . of or from any person or persons, for any horse or horses or other beast or cattle, or for any waggon, wain, cart, or other carriage, employed in carrying or conveying, or going empty to fetch, carry, or convey, or returning empty from carrying or conveying, having been employed only in carrying or conveying, on the same day, any stones, bricks, timber, wood, gravel, or other materials for making or repairing any turnpike road or public highway, or for building, rebuilding, or repairing any present or any future bridge or bridges on any such road or public highway." The section also exempts from toll surveyors of turnpike roads, waggons, &c., conveying manure (except lime), or implements of husbandry, or agricultural produce, also horses, &c., employed in husbandry.

Sec. 26. "In any case in which under any Act or Acts of Parliament relating to any turnpike road, there is an exemption from toll or duty in respect of any horse, mule, ass, ox, waggon, cart, or other carriage, drawing or carrying any dung, mould, marl, or compost of any nature or kind soever for improving or manuring the land, or hay, straw, or any other fodder for cattle, or materials for repairing any turnpike road or highway, such exemption shall be deemed to extend in respect of every such waggon, cart, or other carriage, and also in respect to the cattle drawing the same, going empty or loaded only with implements necessary for more convenient carriage, or loading or unloading such lading, or returning empty or with such implements as aforesaid, having been so laden, notwithstanding the said waggon, cart, or other carriage shall, for the purpose aforesaid, go to or return from any parish or place in which the said turnpike does not lie."

By s. 27, for preventing fraud on toll-collectors, the owner or driver of any empty waggon, cart, or carriage, claiming exemption, must pay the toll before passing through the gate; and the toll-collector is required under a penalty to give the owner or driver a ticket marked "manure exemption" or "road materials," and to refund the amount paid on production of such ticket on the return of the waggon, &c., laden with the manure or road materials. By s. 28, The owner or driver shall not be liable to toll by reason of any basket, empty sack, spade, shovel, or fork, necessary for unloading the materials, if the loading of the waggon, &c., is substantially manure for land or materials for the repair of any highway. By 4 Geo. IV. c. 95, s. 10, the exemptions are not to apply unless the wheels of the waggon, &c., are at least 4½ inches broad, except in the case of waggons, &c., carrying agricultural produce, manure, or implements of husbandry only. And by s. 17 of the same Act, the exemptions are not to apply to additional tolls for overweight.

(1) Unless there be an appeal against the decision of the Highway

*Power to alter Highway Districts.*

39. Any highway district formed under this Act may from time to time be altered (*m*) by the addition of any parishes in the same or in any adjoining county, (*n*) or the subtraction therefrom of any parishes, and new highway districts may be formed by the union of any existing highway districts in the same or in any adjoining county, or any parishes forming part of any existing highway districts, or any highway district may be dissolved; but any such alteration of existing districts, or formation of new districts, or dissolution of any district, shall be made by provisional and final orders of the justices; and all the provisions of this Act with respect to the formation of highway districts and provisional and final orders of justices, and the notices to be given of and previously to the making of such orders, and all other proceedings relating to the formation of highway districts, shall, in so far as the same are applicable, extend to such alteration of existing or formation of new districts, or dissolution of districts, as is mentioned in this section; (*o*) and in addition thereto provision shall be made, if necessary, in any orders of justices made under this section for the adjustment of any matters of account arising between parishes or parts of

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Board, there is nothing in this section to prevent a justice who is a member of the Highway Board from acting as a justice in any matter in which he may have already acted as a member of the Board. But see the provision in 27 & 28 Vict. c. 101, s. 46, *post*, p. 165. As regards notice of appeal to the quarter sessions, see 12 & 13 Vict. c. 45, s. 1.

(*m*) In order that highway districts may be made so far as possible coincident with rural sanitary districts, it is enacted by 41 & 42 Vict. c. 77, s. 3, (*post*, p. 181), that in altering the boundaries of any highway districts, the county authority (that is, the justices at quarter sessions) shall have regard to the boundaries of the rural sanitary districts in their county, and shall so far as may be found practicable, form highway districts so as to be coincident in area with rural sanitary districts, or wholly contained within rural sanitary districts.

(*n*) That is, in the same county in which the highway district is situated or in any adjoining county. The Act does not contemplate the original formation of highway districts containing parishes in adjoining counties; and this section only provides for the alteration of districts which have been previously formed by the addition of parishes in adjoining counties to such district, in cases in which, from practical experience, such a combination may appear to be desirable. Further, with regard to this section, see 27 & 28 Vict. c. 101, ss. 14, 15.

(*o*) See *ante*, ss. 5, 6.

districts in consequence of the exercise of the powers given by this section. Where any parish is added to or any district united with any district in another county, the final order of the justices of the county in which such parish or district is situate shall not be confirmed by them until they shall have received the approval of their provisional order for such addition or union from the justices of the county in which the district is situate to or with which such addition or union is to be made. Where any highway district is dissolved, or where any parish is excluded from any highway district, the highways in such district or parish shall be maintained, and the provisions of the principal Act in relation to the election of surveyors and to all other matters shall apply to the said highways, in the same manner as if such highways had never been included within the limits of a highway district. (p)

*Provision in case of failure of Board to hold First Meeting.*

40. If any Highway Board make default in holding its first meeting in pursuance of this Act, (q) such board shall not thereupon become disqualified from acting, but the justices in general or quarter sessions shall, on the application of any person liable to pay highway rates within the district, make such order as they think fit for the holding of such Board at some other time, and any order so made shall be deemed to be an order capable of being removed into the Court of Queen's Bench, (r) in pursuance of the Act passed in the session holden in the twelfth and thirteenth years of the reign of her present Majesty, chapter forty-five, and may be enforced accordingly, (s) and the costs of

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(p) By 27 & 28 Vict. 101, s. 14, the powers given by this section extend to the separation of any townships, &c., which may have been consolidated by any previous order of justices. See the second clause of that section.

(q) That is, at the time fixed by the order of justices in that behalf. See proceedings of Highway Boards, *post*, p. 176, and 27 & 28 Vict. c. 101, s. 10, *post*.

(r) Now, the Queen's Bench Division of the High Court of Justice.

(s) By s. 18 of 12 & 13 Vict. c. 45, an order of general or quarter sessions, "upon the application of any person entitled to enforce such order, and upon production of a copy of such order under the hand of the Clerk of the Peace or his deputy, and upon proof of refusal or neglect to obey such an order," may be removed into the Queen's Bench; "and

any application to the court of quarter sessions in pursuance of this section shall be defrayed out of the district fund of the Board. (*t*)

*Reservation of right to adopt Local Government Act (become Local Government District).*

41. Any parish or part of a parish included in a highway district may *adopt the Local Government Act (u)* in the same manner and under the same circumstances in and under which it might have adopted the same if it had not been included in such district; and upon such adoption being made such parish or part of a parish shall cease to form part of such district, subject nevertheless to the payment of any contribution that may at the time of such adoption be due from such parish or part of a parish to the Highway Board. (*v*).

APPLICATION OF PRINCIPAL ACT.

*Construction of Principal Act and this Act.*

42. The following regulations shall be observed with

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thereupon such order shall be of the same force and effect, and may be enforced in the same manner, as a rule made by the said Court of Queen's Bench."

(*t*) If the costs be not paid by the Highway Board, *mandamus* would appear to be the proper remedy.

(*u*) That is, now, may be constituted a Local Government District in the manner provided by the Public Health Act, 1875; see 38 & 39 Vict. c. 55, s. 272.

(*v*) With regard to the management of highways in districts under Local Boards of Health and Local Boards, see Glen's "Highway Laws," second edition, and also Glen's "Law of Public Health and Local Government," ninth edition. The "part of a parish," which is not constituted a Local Government District will form by itself a separate highway parish within the meaning of s. 3, *ante*, and 27 & 28 Vict. c. 101, s. 3, *post*. Further, with regard to this section, see *Driver v. Kingston Highway Board*, *post*, pp. 173, 174.

It should here be mentioned that, by the Public Health Act, 1875, where part of a parish is included within an urban sanitary district, and the excluded part was before the constitution of that district, liable to contribute to the highway rates for such parish, such excluded part shall (unless constituted a separate highway parish by resolution of owners and ratepayers or included in a highway district)



respect to the construction of the principal Act and this Act: (*w*)—

1. This Act shall be construed as one with the principal Act so far as is consistent with the provisions of this Act:
2. The ninth section of the principal Act, whereby it is enacted that a surveyor may be appointed by the inhabitants of a parish with a salary, shall not apply to any parish within any district formed under this Act: (*x*)
3. The tenth section of the principal Act, whereby it is enacted that the surveyor or surveyors at the time of passing his or their accounts as therein mentioned shall deliver to the justices a statement in writing of the name and residence of the person or persons appointed to succeed him or them as a surveyor or surveyors, shall not apply to any parish within any district formed under this Act:
4. The thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth sections of the principal Act, providing for the formation of parishes into districts, and the eighteenth and nineteenth sections of the principal Act, providing for the appointment of a Board in large parishes, shall not apply to any parish within any district formed under this Act: (*y*)
5. The penalty imposed by section twenty of the principal Act on the surveyor for neglect of duty shall not apply to a Highway Board constituted under this Act: (*z*)

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for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district; see 38 & 39 Vict. c. 55, s. 216, in the note to 27 & 28 Vict. c. 101, s. 5, *post*, p. 129.

(*w*) See also the Highways and Locomotives (Amendment) Act, 1878, *post*, p. 180.

(*x*) A district surveyor, and, if the Board think fit, an assistant surveyor, are to be appointed by the Highway Board under s. 12, *ante*, p. 96; or two or more Highway Boards may unite in appointing a joint district surveyor under 41 & 42 Vict. c. 77, s. 6, p. 186.

(*y*) See note (*a*) to s. 7, *ante*, p. 85.

(*z*) See s. 18, *ante*, and 41 & 42 Vict. c. 77, s. 10 (*post*, p. 196), as to the proceedings to be taken where a Highway Board make default in the performance of their duty of maintaining the roads.

6. Any summons or notice, or any writ or any proceeding, at law or in equity, requiring to be served upon the Board, may be served by the same being left at or transmitted through the post in a prepaid letter directed to the office of the Board, (a) or being given personally to the district surveyor or Clerk of the Board :
7. The thirty-fifth section of the principal Act, whereby it is provided that the ratepayers of any parish may divide amongst themselves the carriage of materials in manner therein mentioned, shall not apply to any parish within any district formed under this Act :
8. The thirty-ninth, fortieth, forty-third, forty-fourth, and forty-fifth sections of the principal Act relating to the accounts of surveyors shall not apply to the Highway Board of any district formed under this Act. (b)

*Relative Duties of outgoing Surveyors and Highway Board.*

43. On the formation of a highway district the following regulations shall be enacted with respect to the surveyors and the Highway Board (c) :—

1. No surveyor shall be appointed under the principal Act for any parish within such district :
2. The outgoing surveyor of every parish within the district shall continue in office until seven days after the appointment of the district surveyor by the Highway Board of the district of such outgoing surveyor, and no longer ; and he may recover any

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(a) It will, however, be necessary to preserve evidence of the posting of the letter ; and the most convenient mode of doing so will be for the person posting the letter to register at the post-office the letter containing the summons, &c., and for another person to make an endorsement of the contents of the letter on the receipt given by the officer of the post-office. As to the service of notices issued by the Highway Board, see 27 & 28 Vict. c. 101, s. 26, *post*.

(b) These several excepted provisions of the principal Act will be best understood by consulting the same in Glen's "Highway Laws."

(c) See 41 & 42 Vict. c. 77, s. 4, (*post*, p. 182), under which a rural sanitary authority may in certain cases become the Highway Board for their district.

highway rate made and then remaining unpaid, in the same manner as if this Act had not been passed, (d) and the money so recovered shall be applied, in the first place, in reimbursing any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction, and the surplus (if any) shall be paid by him to the treasurer of the Highway Board; and (e) he shall be entitled to receive from the Highway Board any sum [not exceeding five pounds] (f), which on the allowance of his accounts (g) shall be found to be

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(d) The meaning of this is that the surveyor after he is out of office shall continue to collect all arrears of highway rates remaining unpaid at the time of his going out of office; and, after reimbursing himself his expenses and discharging all outstanding debts, pay the balance to the treasurer of the Highway Board; for it has been held that it is the duty of outgoing surveyors of a parish to collect an outstanding highway rate when, during their term of office, the parish is incorporated into a new highway district under the 25 & 26 Vict. c. 61, and a Highway Board and district surveyor are appointed.—*Reg. v. Bluffield*, 28 J. P. 755, 11 L. T. (N. S.) 337. The words “and then remaining unpaid,” in s. 43, mean remaining unpaid at the end of seven days from the appointment of the district surveyor.—*Ibid.*

A.'s year of office as surveyor in the township of D. expired on the 25th March, 1863, when B. was appointed his successor pursuant to 5 & 6 Wm. IV. c. 50, and at the next special sessions (on 1st April) A. verified and passed his accounts, which showed a balance of £24 6s. 5d. in his hands due to the township. At this time there were debts owing by A. as such surveyor. On the 10th April a Highway Board was formed, under 25 & 26 Vict. c. 61, for a district which included the township of D., and on the 4th May the Highway Board appointed a district surveyor, B. never having acted as surveyor at all. Under this state of circumstances, it was held, upon the construction of the 5 & 6 Wm. IV. c. 50, ss. 42, 43, and 25 & 26 Vict. c. 61, ss. 11, 43, that A. was an “outgoing surveyor,” and as such liable to account to the Board, but that he was entitled to the same allowances for disbursements, &c., from the Board as he would have been entitled to if he had paid over the balance to his immediate successor in office.—*Wrexham v. Harcastle*, 19 C. B. (N. S.) 177.

(e) The money so paid to the treasurer will be credited to the particular parish on account of which it is paid by the surveyor.

(f) By 27 and 28 Vict. c. 101, s. 28, this section is to be construed as if the words between brackets, “not exceeding five pounds,” were omitted therefrom; and the Statute Law Revision Act, 1875, expressly repeals these words.

(g) By the auditor, under 41 & 42 Vict. c. 77, s. 9, *post*, p. 189

due to him as such surveyor after the collection and expenditure of the whole of the highway rate made in such parish during the last year : (h)

3. The Highway Board shall, for all the purposes of the principal Act except that of levying rates, be deemed to be the successor in office of the surveyor of every parish within the district.

*Provisions of principal Act to be applicable to Highways under local or personal Acts.*

44. All the provisions of the principal Act for widening, diverting, and stopping up highways (i) shall be applicable to all highways which now are or may hereafter be paved, repaired, or cleansed under or by virtue of any local or personal Act or Acts of Parliament, or which may be situate within the limits of any such Act or Acts, except highways which any railway company, or the owners, conservators, commissioners, trustees, or undertakers of any canal, river, or inland navigation, are liable by virtue of any Act of Parliament relating to such railway, canal, river, or inland navigation to make, maintain, repair, or cleanse.

*Enabling Councils of certain Boroughs to adopt Parish Roads and Highways, and to apply Rates for their repair.*

45. Whereas there are in certain boroughs in England and Wales roads and highways that are now and have heretofore been repaired by the inhabitants of the several parishes or townships within which such roads and highways are situated, and who (*sic*) also contribute and pay to the general rates levied for the repair of the public streets, roads, and highways maintained and kept in repair by the council of such boroughs, by reason whereof a great burden is imposed upon the ratepayers of the said parishes and townships ; and it being doubtful whether the council of

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(h) When it is in contemplation to form a Highway Board under the Act, the surveyors of the parishes proposed to be included in the district should take care that sufficient rates are made to cover all their probable expenditure before they go out of office.

(i) See Glen's "Highway Laws," second edition, for those provisions.

such boroughs have the power to adopt such parish roads and highways, or to apply the rates collected in such boroughs in repairing the same: Be it enacted, That it shall and may be lawful for the council of every such borough in England and Wales, upon the petition of the majority of the ratepayers of such parishes or townships present at a public meeting duly convened, (j) to adopt all or any of such parish roads and highways as the council shall in its discretion consider advisable, and to apply the rates levied and collected by the said council for the repair of the public streets, roads, and highways within such borough in repairing and maintaining such parish roads and highways: (k) Provided always, That it shall be competent for such council, previous to adopting such parish roads and highways, to require the provisions contained in any local Act applying to the public streets, roads, and highways of such borough to be complied with. (l)

*District Highway Boards may permit Landowners to erect Fences without incurring liability to repair Highways.*

46. No person through whose land a highway passes, which is to be repaired by the parish, shall become liable for the repair of such highway by erecting fences between such highway and the adjoining land, if such fences are erected with the consent in writing of the Highway Board of the district within which such Highway is situate in the case of a place within the jurisdiction of a Highway Board, and in the case of any other place with the consent of the surveyor or other authority having jurisdiction over the highway. (m)

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(j) This must be a public *vestry* meeting duly convened under the Act 58 Geo. III. c. 69, for the regulation of parish vestries, and the petition should be signed by the majority of the ratepayers present at the meeting.

(k) The adoption should be by a resolution of the council, reciting the petition, duly entered on the minutes of their proceedings. See also s. 152, of the Public Health Act, 1875 (38 & 39 Vict. c. 55), as to the adoption of streets by town councils and other urban sanitary authorities.

(l) As regards paving, &c., streets in municipal boroughs under Local Acts, see 20 & 21 Vict. c. 50.

(m) With reference to the provision in this section, see Glen's "Highway Laws," second edition. The fence when erected must not

*Recovery of Penalties.*

47. All penalties under this Act, and all moneys recoverable as penalties, may be recovered summarily before any two or more justices in the manner directed by the Act of the session of the eleventh and twelfth years of her present Majesty, chapter forty-three, and any Act amending the same; (n) but where any sum adjudged to be paid under this Act in respect of such penalties or moneys exceeds five pounds, an appeal may be had by any person aggrieved to a court of general or quarter sessions in manner provided by the one hundred and tenth section of the Act passed in the session holden in the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-six, intituled "An Act to Consolidate and Amend the Statute Law of England and Ireland relating to Larceny and other similar Offences." (o)

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be within fifteen feet of the centre of the highway; see 5 & 6 Wm. IV. c. 50, s. 69; and it must not be on the highway.

(n) With regard to the recovery of penalties, see the third edition of Glen's "Jervis's Acts."

(o) Regarding appeals to the court of quarter sessions, the 24 & 25 Vict. c. 96, s. 110, enacts that any person aggrieved may appeal to the next court of general or quarter sessions, which shall be holden not less than twelve days after the day of conviction, for the county or place wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction and seven clear days at the least before such session, and shall also either remain in custody until the sessions, or shall enter into a recognizance with sufficient sureties before a justice of the peace conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; or, if such appeal shall be against any conviction whereby only a penalty or other sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal; and upon such notice being given and such recognizance being entered into, or such deposit being made, the justice before whom such recognizance shall be entered into, or such deposit shall be made, shall liberate such person, if in custody; and the court at such sessions shall hear and determine the matter of appeal, and shall make such order therein, with or without costs to either party, as to the court seem meet, and in case of the dismissal of the appeal on the affirmance of the conviction

## SCHEDULE.

*Proceedings of Highway Boards*

\* \* \* (p)

## FORM (A).

NOTICE is hereby given, That at the court of general or quarter sessions to be held on the       day of       a proposal will be made *to divide the county of Lincoln into highway districts [or to divide the parts of Holland in the county of Lincoln into highway districts, or to constitute the county of Rutland a highway district, or to constitute the parishes of Alford, Castle Carey, and Lovington, in the county of Somerset, a highway district]*.

## FORM (B).

WHEREAS at a court of *general or quarter* sessions, held on the       day of       last, a provisional order was made in the words following; that is to say [*here set out the provisional order*].

Notice is hereby given, that the confirmation of the said provisional order by a final order will be taken into consideration by the justices at the court of *general or quarter* sessions to be held on the       day of       next.

shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and in any case where, after any such deposit shall have been made as aforesaid, the conviction shall be affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction and the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the party convicted; and in any case where, after any such deposit, the conviction shall be quashed, the court shall order the money deposited to be repaid to the party convicted; and in every case where any conviction shall be quashed on appeal as aforesaid, the Clerk of the Peace, or other proper officer, shall forthwith endorse on the conviction a memorandum that the same has been so quashed; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction.

(p) This schedule is repealed by 27 & 28 Vict. c. 101, s. 27, so far as relates to proceedings of Highway Boards, and another is substituted for it in the schedule to that Act, *post*, p. 176.

## THE HIGHWAY ACT, 1864.

27 & 28 VICT. CAP. 101.

AN ACT TO AMEND THE ACT FOR THE BETTER MANAGEMENT OF HIGHWAYS IN ENGLAND. [29th July, 1864.] •

WHEREAS it is expedient to amend an Act passed in the Session holden in the twenty-fifth and twenty-sixth years of the Reign of Her present Majesty, chapter sixty-one, and intituled "An Act for the better Management of Highways in England:" Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

### PRELIMINARY.

#### *Short Titles of Highway Acts.*

1. The Acts hereinafter mentioned may be cited for all purposes by the short titles following ; that is to say,

The Act passed in the Session of the fifth and sixth years of the reign of King William the Fourth, chapter fifty, and intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," by the short title of the "Highway Act, 1835 :"

The said Act passed in the Session of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter sixty-one, by the short title of the "Highway Act, 1862 :"

This Act by the short title of the "Highway Act, 1864."

All the above-mentioned Acts and any Acts passed or to



be passed (q) amending the same shall be included under the short title of "The Highway Acts." (r)

*This Act shall be construed with 25 & 26 Vict. c. 61.*

2. This Act, so far as is consistent with the tenor thereof, shall be construed as one (s) with the "Highway Act, 1862."

*Definition of "Poor Law Parish," "Highway Parish,"  
"Highway Rate," and "County."*

3. "Poor Law Parish" shall mean a place that separately maintains its own poor:

"Highway Parish" (t) shall mean a place that after the constitution of a highway district separately maintains its own highways, and is entitled to return a waywarden or waywardens to the Highway Board of the district:

"Highway Rate" shall include any rate, whether poor rate or not, out of the produce of which moneys are payable in satisfaction of precepts of a Highway Board: (u)

"County" shall include any division of a county that has a separate county treasurer. (v)

#### AMENDMENTS AS TO ORDERS OF JUSTICES.

##### *Amendment of Section 6 of Highway Act of 1862. (w)*

4. Where more highway districts than one are comprised in any order of justices, whether provisional or final, and whether made before or after the passing of this Act, the

(q) See also 25 & 26 Vict. c. 61, s. 4, *ante*, p. 79.

(r) The "Highways and Locomotives (Amendment) Act, 1878," amends these Acts, and is therefore included in the expression, "The Highway Acts."

(s) That is, as one Act.

(t) See the definition of the word "Parish" in 25 & 26 Vict. c. 61, s. 3, *ante*, p. 79; see also s. 5, and 41 & 42 Vict. c. 77, s. 25 (*post*, p. 211), with reference to places in which there are no highways maintainable by the inhabitants at large.

(u) See *post*, s. 33.

(v) With reference to the word "county" see 25 & 26 Vict. c. 61, s. 2, and note *ante*, p. 78.

(w) See *ante*, p. 81.

formation of each of such districts is to be deemed independent of the formation of any other district, and the order shall for all purposes be construed and take effect as if a separate order had been made in respect of each district; and any variation in a provisional order altering the parishes in any one or more districts comprised in that order shall make that order provisional only as to the particular district or districts in which the alterations are made, and not as to any other district or districts included in the same order.

*Certain Places to be deemed Places separately maintaining their own Highways.*

5. Any parish, township, tithing, hamlet, or other place having a known legal boundary (*x*) in which there are no highways repairable at the expense of the place, or in which the highways are repaired at the expense of any person, body politic or corporate, by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever than out of a highway rate or other general rate, shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways. (*y*)

Where part of a parish is, in pursuance of the Local Government Act, 1858, Amendment Act, 1861, Section 9, treated as forming part of a district constituted under the Local Government Act, 1858, for all purposes connected with the repair of highways and the payment of highway rates, but for no other purpose, such part shall, for the purposes of the Highway Act, 1862, and this Act, be deemed to be a place separately maintaining its own highways, and capable of being included in a highway district,

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(*x*) In *Reg. v. Gascoigne*, 29 J. P. 389, it was held that though the district for which the waywarden acts be not defined by "a known legal boundary," he must be elected by the inhabitants of that part, and not by those of the whole parish.

As a place such as that contemplated in this section would come within the definition of a "highway parish," it would be liable to the expenses specified in s. 32, *post*.

(*y*) See also 41 & 42 Vict. c. 77, s. 25 (*post*, p. 211), which expressly authorises the appointment of a surveyor of highways for any place which does not in fact maintain any highways or contribute to highway rates.

without requiring the consent of the Local Board to be given. (z)

Where the highways of one part of a parish are, in pur-

(z) The provision in the 24 & 25 Vict. c. 61. s. 9, here referred to, was as follows:—"Where part of a township or place not comprised within any district in which the Local Government Act, 1858, is in force, and which part is hereinafter referred to as 'the excluded part,' was, before the said Act came into force in such district, liable to contribute to the highway rates for such township or place, such excluded part shall, for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as if forming part of such district."

Now, however, the Local Government Act, 1858, Amendment Act, 1861, is repealed and the following provision contained in s. 216 of the Public Health Act, 1875 is substituted for the section above quoted: "Provided that where part of a parish is included within an urban district, and the excluded part was, before the constitution of that district, liable to contribute to the highway rates for such parish, such excluded part shall (unless in the case of an urban district constituted before the passing of this Act a resolution deciding that such excluded part should be formed into a separate highway district has been passed in pursuance of the Local Government Act 1858 Amendment Act, 1861, or unless such excluded part has been included in a highway district under the Highway Acts), for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district."

The same section of the Public Health Act, 1875, continues as follows: "Provided also that in the case of an urban district constituted after the passing of this Act a meeting of owners and rate-payers of the excluded part (to be convened and conducted in the manner provided by Schedule III. to this Act) may decide that such excluded part shall be a highway parish, and thereupon the excluded part shall for all purposes connected with highways, surveyors of highways, and highway rates, be considered and treated as a parish maintaining its own highways; but the requisition for holding any such meeting shall be made within six months after the constitution of the urban district. The Court of Quarter Sessions may by order direct that for any such excluded part a waywarden or waywardens shall be elected, and may invest any waywarden elected in pursuance of any such order with all or any of the powers of waywardens under the Highway Acts."—38 & 39 Vict. c. 55, s. 216.

According to the present Act the "excluded part" is "capable of being included in a highway district, without requiring the consent of the Local Board to be given." The latter words referring to the consent of the Local Board imply that the consent of the Local Board would otherwise have been necessary; but it is not so, for there is nothing in any of the Public Health Acts enabling them either to give or to withhold their consent.

suance of a private (a) Act of Parliament, repairable out of a different rate from that out of which the highways of the other part are repairable, each of such parts shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways.

*Part of s. 5 of Highway Act of 1862 repealed, and other provisions enacted.*

6. \* \* \* \* (b) When it is proposed that only part of a county is to be constituted a highway district, not less than two out of the five justices making such proposal shall be resident in the said district, or acting in the petty sessional division in which such district or some part thereof is situate.

*Amendment of s. 7 of Highway Act of 1862 as to combination of Townships, &c.*

7. The power given by the seventh section of "The Highway Act, 1862," (c) of combining townships, tithings, hamlets, or places separately maintaining their own highways, and situate in a poor law parish, shall extend to combining any two or more of such townships, tithings, hamlets, or places, and any combination so formed shall for all the purposes of the Highway Acts be deemed to be a highway parish. (d)

Where a township, tithing, hamlet, or other place separately maintaining its own highways is situate in two or more poor law parishes, each part of such township, tithing, hamlet, or other place may be combined with the parish in which that part is situate. (e)

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(a) Probably a "Local and Personal" Act of Parliament is here intended.

(b) The portion of this section which repealed so much of the fifth section of the Highway Act, 1862, as provided that, "when it is proposed that only part of a county shall be divided into a highway district, not less than two out of the five justices making such proposal shall be resident in the said district," is now repealed by the Statute Law Revision Act, 1875, but not so as to revive the repealed enactment.

(c) *Ante*, p. 87.

(d) See note to the last part of 25 & 26 Vict. c. 61, s. 7, *ante*, p. 87.

(e) See note to the last part of 25 & 26 Vict. c. 61, s. 7, *ante*, p. 87.

The justices may, by their provisional and final order, declare that any poor law parish within their jurisdiction, or residue of a poor law parish, after excluding such part, if any, as is prohibited by the "Highway Act, 1862," either wholly or without the consent of the governing body, from being included in the highway district, (f) shall henceforward become a highway parish; and upon such declaration being made such poor law parish, or residue of a poor law parish, shall thereafter be a highway parish entitled to return a waywarden or waywardens to the highway board of the district in which it is included; and no rate shall be separately levied for the maintenance of the highways, and no separate waywardens be elected in any township, tithing, hamlet, or other subdivision of such poor law parish or residue of a poor law parish.

Where, previously to the passing of the provisional order forming a highway district, no surveyors or waywardens have been elected within any highway parish in that district, and where the mode of electing a waywarden or waywardens in such parish is not provided by this Act or the "Highway Act, 1862," (g) the justices shall, by their provisional and final orders constituting the district, or by any subsequent provisional and final orders, make provisions for the annual election of a waywarden or waywardens for such parish. (h)

*Provision for Places partly within and partly without a Borough.*

8. Where a parish or place separately maintaining its own highways is situate partly within and partly without the limits of a borough, the justices may by their provisional and final orders, include in a highway district the outlying part of such parish or place; (i) and where the out-

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(f) The part of the "Highway Act, 1862," which is here referred to is s. 7, "secondly," *ante*, p. 86.

(g) See s. 11 of this Act, and s. 10 of 25 & 26 Vict. c. 61.

(h) The nature of the provisions which the justices are to make do not appear to be indicated by the Act. Probably the justices will follow s. 10 of the 25 & 26 Vict. c. 61 in making those provisions, so that there may be uniformity of practice in all the highway parishes.

(i) By 25 & 26 Vict. c. 61, s. 7 (secondly), the justices were pre-

lying part of a parish or place situate as aforesaid has been, previously to the passing of this Act, or may be hereafter, included in a highway district, each part of such parish or place shall for all the purposes of the Highway Acts be deemed to be a place separately maintaining its own highways; and a waywarden or waywardens shall be elected by the ratepayers in each such part at such time and in such manner as may be provided by the said justices. (j)

*Power of Justices as to Extra-parochial Places.*

9. The justices in petty sessions may appoint overseers, or otherwise deal with any extra-parochial place with a view to constituting it a highway parish or part of a highway parish, in the same manner as the justices may deal with such place for the purpose of constituting it a place or part of a place maintaining its own poor, in pursuance of the powers for that purpose given by the Act of the twentieth year of the reign of her present Majesty, chapter nineteen. (k)

*Part of s. 6 of Highway Act of 1862 as to Meetings of Board repealed, and other provisions enacted.*

10. \* \* \* \* (l)

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cluded from including in any highway district any parish or place, or part of a parish or place, within the limits of a borough, without the consent of the council of the borough and of the vestry of the parish, or part of the parish, proposed to be included. Under this provision the justices can deal with the outlying part of any parish so situated without any such consents as above-mentioned being necessary.

(j) As to the election of the waywarden in such case, see note to s. 7, last subdivision.

(k) Now, however, by the 31 & 32 Vict. c. 122, s. 27, extra-parochial places, for all civil parochial purposes, are annexed to and incorporated with the next adjoining parish with which they have respectively the longest common boundary; so also accretions from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of any river to the middle of the stream, are annexed to and incorporated with the parish to which such accretion, part, or bank adjoins, in proportion to the extent of the common boundary.

(l) The first part of this section is repealed by the Statute Law

The first meeting of the Highway Board after the formation of a district shall be held at such time as may be appointed by the provisional or final order of the justices, so that the time appointed be not more than seven days after the expiration of the time limited by law for the election of waywardens, (m) or, in the case of a special day being appointed for such election as hereinafter mentioned, (n) be not more than twenty-one days after that day.

The day appointed for the first meeting of the Board shall for all the purposes of the Highway Acts be deemed to be the day of the formation of the district; and the surveyor for the time being of every parish within the district shall continue in office until seven days after the appointment of the district surveyor, and no longer. (o)

*Power to Justices to bring Highway Act into operation on a particular Day.*

11. In forming a highway district under the "Highway Act, 1862," the justices may, for the purpose of avoiding delay in bringing the Act into operation, appoint by their

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Revision Act, 1875, as spent. It repealed par. 5 of 25 & 26 Vict. c. 61, which had provided that the provisional order forming a highway district might, and that the final order should state the time, not being more than seven days after the first election of waywardens in pursuance of the Act, and the place at which the first meeting of the Highway Board should be held *in the district*; and though the paragraph is now repealed it seems from the commencement of s. 11 of the 25 & 26 Vict. c. 61, that the first meetings of Highway Boards should still be held within their respective districts. It was enacted by the 26 & 27 Vict. c. 17, s. 6, which is repealed by the Public Health Act, 1875, but re-enacted in the Fifth Schedule to the same Act, that "where any local government district or any other place is surrounded by or adjoins a highway district constituted under the Highway Act, such first-mentioned district or other place shall, for the purpose of any meeting of the Highway Board, be deemed to be within such highway district."

(m) See 25 & 26 Vict. c. 61, s. 10, second subsection, and note thereon, *ante*, p. 93.

(n) See s. 11, *post*.

(o) By 25 & 26 Vict. c. 61, s. 12, the district surveyor is to be appointed at the first meeting of the Highway Board, or some adjournment thereof.

final order a day on which the first election of waywardens as members of the Highway Board is to take place in the district.

On the day appointed for the election waywardens shall be elected in every parish in the district entitled to elect such officers by the same persons and in the same manner by and in which waywardens are elected under the "Highway Act, 1862," (p) and all the provisions of the Highway Acts relating to the qualifications of surveyors (q) or waywardens, (r) and to the appointment of surveyors and waywardens by justices in the event of no election taking place, (s) shall apply accordingly; but the waywardens elected under this section shall continue in office only until the time at which the next annual election of surveyors would have taken place in the several parishes of the district if

(p) As to the mode of election of waywardens, see 25 & 26 Vict. c. 61, s. 10, second subsection, and note thereon, *ante*, p. 93. If, however, the rural sanitary authority has acquired the powers of a Highway Board, there will be no such election of waywardens; see 41 & 42 Vict. c. 77, s. 4. By "such officers," "waywardens" are intended; and perhaps they are "officers" in the same sense that "overseers of the poor" are considered parish officers.

(q) By 5 & 6 Wm. IV. c. 50, s. 7, "Any person living within the parish, or any adjoining parish, and having an estate in houses, lands, tenements, or hereditaments lying within such parish, in his own right or in right of his wife, of the value of £10 by the year, or a personal estate of the value of £100 (such person not living within the parish being willing to serve the office), or being an occupier or tenant of houses, lands, tenements, or hereditaments (whether resident within the parish, or within any adjoining parish) of the yearly value of £20, shall be eligible to be elected a surveyor for the purposes of this Act."

(r) As to the qualification of waywardens, see note to 25 & 26 Vict. c. 61, s. 10, second subdivision, *ante*, p. 93.

(s) By 5 & 6 Wm. IV. c. 50, s. 11, "In case it shall appear on oath to the justices at a *special sessions for the highways*, that the inhabitants of any parish have neglected or refused to nominate and elect a surveyor or surveyors in manner and for the purposes aforesaid, it shall and may be lawful for such justices, and they are hereby authorized and required by writing under their hands, at the next succeeding special sessions for the highways, to appoint any person whom they may think fit to be a surveyor for such parish till the annual meeting then next ensuing for the nomination of overseers, or for the election of surveyors as aforesaid, and with or without salary as to the said justices shall seem fit and proper." As to the Special Sessions, however, see s. 46, *post*.



*the same had not been constituted a highway district, (t) and at that time new waywardens shall be elected in manner provided by the Highway Acts. (u)*

*Publication of Orders in Gazette made permissive.*

12. No order of the justices forming a highway district shall be invalidated by reason of its not being published in the *London Gazette*; (v) and where any reference is made in any section of the "Highway Act, 1862," to the date of the publication in the Gazette of the order, (w) such section shall be construed as if the date of the making of the final order under which the district is formed were substituted for "the date of the publication in the Gazette of the order under which the district is formed;" and any copy of the provisional or final order of the justices forming a highway district, certified under the hand of the Clerk of the Peace to be a true copy, shall be receivable in all courts of justice and in all legal proceedings as evidence of the formation of the district and of the matters in the said order mentioned. (x)

(t) But now, by s. 11 of the 41 & 42 Vict. c. 77 (*post*, p. 198), "notwithstanding anything in the Highway Acts, waywardens shall continue in office till the 30th day of April in the year following the year in which they were elected, and on that day their successors shall come into office."

(u) As to these two last provisions, see note to 25 & 26 Vict. c. 61, s. 10, second subsection, *ante*, pp. 93, 94.

(v) As to publication of the order in the *London Gazette*, see 25 & 26 Vict. c. 61, s. 6, subsection 6, *ante*, p. 84. The present provision will apply to past as well as to future orders of justices.

(w) See 25 & 26 Vict. c. 61, s. 8.

(x) Where a provisional order for forming a highway district constituted a certain township (E.) and other parishes and places named therein a highway district, and directed that one waywarden should be elected for each of the said parishes, townships, and places, and the township (E.) was divided into three hamlets, each of which maintained its own highways, which were not separately named in the order, it was held that the provisional order and the final order based on it were bad, as the first did not state whether any or what waywardens were to be elected for the three hamlets under 25 & 26 Vict. c. 61, s. 6, subsection 4.—*Reg. v. York. (W.R.) JJ. 34 L. J. M. C. 227, 12 L. T. (N. S.) 580, 29 J. P. 440.*

The borough of East Looe is an ancient borough having liberties and franchises, with charters containing non-intromittant clauses, but

*As to Union of Parishes in different Counties.*

13. Contiguous places (y) situate in different counties and places situate partly in one county and partly in another county or counties (z) shall, for the purpose of being united in one highway district, be deemed to be subject to the jurisdiction of the justices of any county, who may make a provisional and final order constituting them an highway district, in the same manner as if all such places or parts of places were situate in such last-mentioned county; subject to this proviso, that the provisional and final orders of the justices of the said county shall be of no validity unless provisional and final orders to the same effect are passed either concurrently with or subsequently to the first-mentioned provisional and final orders by the justices of every other county in which any of the said places or parts of places are situate.

*Amendment of s. 39 of Highway Act, 1862.*

14. The approval of the justices of any county to any provisional order made by the justices of another county affecting any place in such first-mentioned county, in pursuance of the thirty-ninth section of the "Highway Act, 1862," (a) shall be testified by provisional and final orders of the justices of the said first-mentioned county.

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is not a borough within the exception in s. 2 of the 25 & 26 Vict. c. 61. It is wholly surrounded by the county of Cornwall, and maintains its own poor and highways; and it was held that the justices of the county might take the proper proceedings in quarter sessions for making it a part of a highway district under the 25 & 26 Vict. c. 61, s. 5; and further, that they had jurisdiction to hear a complaint by the waywarden against the overseers of the poor of the borough for not paying to the treasurer of the Highway Board the sum ordered by the precept of the Board to be levied in the borough. It was also held that the following description of the borough, "The several parishes, townships, tithings, hamlets, or places of Liskeard parish . . . East Looe . . . shall be united . . ." in the order constituting the highway district, was not such an imperfect description as to vitiate the order.—*Giles v. Glubb*, 13 L. T. (N. S.) 526.

(y) That is, contiguous highway parishes.

(z) As to the county in which such places are to be deemed to be situated for the purposes of the Acts, see 25 & 26 Vict. c. 61, s. 7 (thirdly).

(a) *Ante*, p. 116.

The powers conferred on justices by the thirty-ninth section of the "Highway Act, 1862," shall be deemed to extend to the separation of any townships, tithings, hamlets, or places (b) separately maintaining their own highways which may have been consolidated by any previous order of the justices, and to an alteration in the number of way-wardens of any parish. (c)

*As to the Costs of Parishes applying to be removed from one District to another.*

15. Where, after the formation of an highway district, an application is made by any parish in that district to any court of general or quarter sessions, praying that the said parish may be removed from that district, (d) all costs incidental to or consequential on such application and the removal of the said parish shall, unless the court otherwise directs, be paid by the parish that has made the application in such manner as the said court may direct. The amount of such costs shall be raised in the same manner as if they were expenses incurred in maintaining and keeping in repair the highways of that parish. (e)

*As to validity of Order of Justices.*

16. No order of the justices forming a highway district, whether made before or after the passing of this Act, shall be void by reason that it includes in such district a place which the justices are not entitled to include under the provisions of this Act or the "Highways Act, 1862," or one of such Acts; and any order containing such prohibited place shall be construed and take effect as if that place had not been mentioned therein.

All expenses properly incurred by the justices of any county in maintaining the validity of any provisional or final order made by them shall be payable out of the county rate of that county.

(b) Note the absence of the word "parishes" from this clause.

(c) The original number of waywardens will be stated in the provisional order, see 25 & 26 Vict. c. 61, s. 6, subsection 4, *ante*, p. 83.

(d) This application will, pursuant to s. 14, *ante*, be made under 25 & 26 Vict. c. 61, s. 39.

(e) The costs will, consequently, be payable by the Highway Board, see ss. 32 & 33, and notes, *post*.

*Extent of Powers of Justices.*

17. All powers and jurisdictions vested in justices by the "Highway Act, 1862," and this Act, or either of such Acts, may from time to time be exercised in relation to highway districts, highway boards, and highway parishes already formed, as well as upon the occasion of forming new highway districts, boards, or parishes; and where an alteration is made in part only of a highway district the residue of that district shall not be affected thereby, but shall continue subject to the Highway Acts in the same manner as if no such alteration had been made.

*Definition of "Provisional and Final Orders."*

18. The expression "provisional and final order," as used in this Act, shall mean a provisional and final order passed and published in manner provided by this Act (*f*) and the "Highway Act, 1862," (*g*) with the necessary variations as to notices and otherwise.

**MISCELLANEOUS AMENDMENTS.***Appointment and Vote of Waywardens.*

19. Every waywarden, before taking his seat as a member of a Highway Board, shall produce (*h*) a certificate of his having been duly elected or appointed a waywarden, and such certificate shall, in the case of an elected waywarden, be signed by the chairman of the vestry or other meeting at which he was elected; and in the case of a waywarden appointed by justices (*i*), be signed by the justices making the appointment.

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(*f*) See section 12.

(*g*) See 25 & 26 Vict. c. 61, s. 6.

(*h*) The Act does not state to whom the certificate shall be produced. The waywarden should, however, take it with him to the first meeting of the Highway Board that he attends after his election. A fresh certificate will be requisite after each annual election or appointment.

(*i*) As to the appointment of a waywarden by the justices, see s. 11, *ante*, and the notes thereon.

A waywarden may sit as such for more places than one, but he shall be entitled to one vote only as waywarden. (j)

*Power to Waywardens to contract for supply or cartage of Materials.*

20. Whereas doubts are entertained whether the forty-sixth section of the Highway Act of 1835 applies to a highway district: Be it enacted, That that section shall not apply to the Highway Board of any highway district or to any parish within any highway district. (k)

Notwithstanding anything contained in the Act of the Session of the twenty-sixth and twenty-seventh years of the Reign of her present Majesty, chapter sixty-one, (l) or in any other Act, any waywarden may contract for the supply or cartage of materials within the parish for which

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(j) But if he is chairman of the Board, he will have a second or casting vote on an equality of votes. See the first schedule, par. (5), *post*.

(k) The provision of 5 & 6 Wm. IV. c. 50, s. 46, which is here excepted, empowers surveyors of highways to contract for purchasing and carrying materials for repair of the highways, and prohibits them under a penalty from being concerned for their own benefit (unless under a licence from justices) in any contract, &c., in connection with the highways.

(l) By 26 & 27 Vict. c. 61, reciting that it is expedient that waywardens appointed under an Act passed in the last session of Parliament, intituled "An Act for the better Management of Highways in England," should be prevented from contracting for any works to be executed within their own districts, it is enacted—

"1. No such waywarden shall directly or indirectly, in his own name, or in the name of any other person or persons, contract for the repair of any road, or for any other work to be executed under the provisions of the said recited Act within the parish for which he is elected waywarden, or within any other parish in the same district, under the pain of forfeiting the sum of ten pounds, with full costs of suit, to any person or persons who shall sue for the same by action for debt in any county court within the jurisdiction of which the parish in which the roads to be repaired, or the other work so contracted for, is situate.

"2. It shall not be lawful for any Highway Board to pay knowingly for any repair or work so contracted for, and any money paid by any Board under any such contract shall be recoverable by them with full costs from the person or persons to whom the same shall have been paid, by action of debt in any of Her Majesty's Courts of Record at Westminster (*i.e.*, in the High Court of Justice), if the same shall amount to above fifty pounds, or in any county court as aforesaid if below that amount, and the balance so recovered, after paying all expenses, shall be placed to the credit of the district fund.

he is waywarden, (m) with the licence of two justices assembled at petty sessions, such licence to be granted on the application of the Clerk of the Highway Board, who must be authorized to make such application by a resolution of his Board assembled at a meeting of which notice has been given. (n)

*Provisions for discontinuance of Maintenance of unnecessary Highways.*

21. When any Highway Board consider any highway unnecessary for public use, (o) they may direct the district

“3. This Act shall be construed with and held to be part of the said recited Act for the better management of highways in England.”

It will be noticed that this enactment only goes to the prohibition of a waywarden contracting for the repair of roads or the execution of any other work connected with the highways within his parish or district; it does not restrain him from selling goods of any kind to the Highway Board for his own profit, nor does it appear to prohibit a waywarden from letting his teams to the Highway Board for the cartage of materials. The prohibition in the Highway Act, 5 & 6 Wm. IV. c. 50, s. 46, is against the surveyor, for his own profit, contracting or bargaining “for work or materials to be made, done, or provided upon, for, or on account of any of the highways or other works under his care or management.”

It would seem that under this enactment the money paid by the Highway Board under a prohibited contract may be recovered by them from the contractor, whether the Highway Board paid the money “knowingly” or not.

By 33 & 34 Vict. c. 97, sch. (tit. agreement), agreements or contracts made or entered into pursuant to the Highways Acts for or relating to the making, maintaining, or repairing highways are subject respectively to a stamp duty of sixpence.

(m) The 26 & 27 Vict. c. 61, s. 1 *supra*, note (l), prohibits a waywarden contracting, &c., in respect of work to be executed within the parish for which he is elected waywarden, or within any other parish in the same district. It will be seen, however, that the present Act only removes the prohibition (with the licence of justices) within the parish for which he is waywarden, and that he will still be disqualified for contracting for work within any other parish in the same district.

(n) As to obtaining materials for repair of a turnpike road thrown upon a highway district, see 33 & 34 Vict. c. 73, s. 11, *post*.

By 33 & 34 Vict. c. 32, s. 11, no person shall be required to take out a licence under the 32 & 33 Geo. III. c. 14, for any horse or mule kept by him solely for the purpose of husbandry on account of such horse or mule being used or employed in drawing materials for the repair of roads and highways of the parish in which he is a rated occupier, and whether for hire or otherwise.

(o) A Highway Board, or any other authority liable to keep any highway in repair, may now apply to a court of summary jurisdiction,

surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as where application is made under the "Highway Act, 1835," to procure the stopping up of any highway, (p) save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair, and the liability of the parish shall cease accordingly; and for the purpose of such proceedings under this enactment, such variation shall be made in any notice, certificate, or other matter preliminary to the making of such order as the nature of the case may require: Provided, that if at any time thereafter, upon application of any person interested in the maintenance of such highway, after one month's previous notice in writing thereof to the Clerk of the Highway Board for the district in which such highway is situated, it appear to any court of general or quarter sessions of the peace that from any change of circumstances since the time of the making of any such order as aforesaid under which the liability of the parish to repair such highway has ceased the same has become of public use, and ought to be kept in repair by the parish, they may direct that the liability of the parish to repair the same shall revive from and after such day as they may name in their order, and such liability shall revive accordingly as if the first-mentioned order had not been made; and the said court may by their order direct the expenses of and incident to such application to be paid as they may see fit.

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under 41 & 42 Vict. c. 77, s. 24 (*post* p. 208), for an order declaring that so much of the highway as lies within the petty sessional division of the court is unnecessary for public use, and ought not to be repaired at the public expense; and on such order being made the expenses of repairing such highway will cease to be defrayed out of any public rate.

(p) As regards the stopping up of unnecessary highways, see 5 & 6 Wm. IV. c. 50, ss. 84-93, in Glen's "Highway Laws," second edition.

The words "and thereupon the like proceedings shall be had as where application is made under the Highway Act, 1835," confer a power of appeal to quarter sessions in like manner as by s. 88 of the 5 & 6 Wm. IV. c. 50.—*Reg. v. Surrey JJ.* L. R. 5 Q. B. 87, 466, 39 L. J. M. C. 49, 145, 34 J. P. 199. A road which branches from and then rejoins a highway stopped up or diverted, and which has no other means of access than through such highway, ceases to be a highway, though not mentioned in the order of sessions.—*Bailey v. Jamieson*, 34 L. T. (N. S.) 62.

*Highway Board may contract to repair Highways for the repair of which other Parties are liable.*

22. The Highway Board of any district may from time to time contract (q) for any time not exceeding three years with any person or body of persons, corporate or unincorporate, to repair any highways, turnpike roads, (r) or

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(q) By 28 & 29 Vict. c. 96, s. 30 (repealed by 33 & 34 Vict. c. 99), and again by 33 & 34 Vict. c. 97, sch., no contract to be made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways shall be chargeable with any higher stamp duty than sixpence.

(r) Doubts having arisen as to whether Highway Boards were liable to contribute to the repair of turnpike roads under 4 & 5 Vict. c. 59 (*post*, p. 258), and the continuing Acts, it is enacted by 26 & 27 Vict. c. 94, s. 1, as follows: Whereas doubts are entertained whether Highway Boards established under the Act of Sessions of the twenty-fifth and twenty-sixth years of the reign of her present Majesty, chapter sixty-one, are liable to contribute to the repair of turnpike roads in pursuance of the Act of the Session of the fourth and fifth years of the reign of her present Majesty, chapter fifty-nine, and the Acts continuing the same: Be it enacted, That where any turnpike road is situate in a parish that is included in a highway district, an order may be made on the Highway Board of the district to contribute to the repair of that road under the same circumstances under which an order for the same purpose may be made on the parish surveyor in pursuance of the said Act of the Session of the fourth and fifth years of the reign of her present Majesty, chapter fifty-nine, as continued as aforesaid; and for the purposes of the said last-mentioned Act, the Highway Board shall be deemed, to be substituted for the parish surveyor, and any rate leviable in pursuance of a precept of the Board for the rate or assessment levied or to be levied by the said surveyor as in the said Act mentioned, and any moneys paid by the Board for the purposes or in pursuance of the last-mentioned Act, shall be deemed to be expenses incurred by the Board in respect of the repair of highways in the parish in which the turnpike road is situate for which contribution is required, and 'parish, as used in this section, shall mean any place in a highway district that returns a waywarden or waywardens to the Board of that district; and it is hereby declared that 'Local Act,' as used in the seventh section of the said Act of the twenty-fifth and twenty-sixth years of the reign of her present Majesty, chapter sixty-one, does not include Turnpike Acts." The part of the above section in italics is amended by 34 & 35 Vict. c. 115, s. 15 (*post*, p. 270), and further provision made. Now by 35 & 36 Vict. c. 85, s. 14 (*post*, p. 275), a Highway Board may voluntarily repair turnpike roads at the cost of the district fund.

By 30 & 31 Vict. c. 121, s. 3, the trustees or commissioners of a turnpike road which shall hereafter become an ordinary highway shall, as soon as may be after the expiration of their trust, distribute the balance of any moneys remaining in their hands amongst the parishes



roads over county or other bridges, (s) or any part thereof, for the repairing of which such persons or body of persons are liable; (t) and any persons or body of persons liable to repair any roads may contract with the Highway Board for the repairing any highways, inclusive as aforesaid, or any part thereof, which the Highway Board is liable to make or repair; and the money payable under any contract made in pursuance of this section shall be raised in the same manner and be paid out of the same rates as would have been applicable to defray the expenses of the repair of such highways if no contract had been made in respect thereto. (u)

upon which will fall the liability to repair the roads of such trust in proportion to the mileage of such roads in each parish, or, if such road shall be situated in any highway district or highway districts, then the trustees shall pay over such balance to the treasurer or treasurers of such highway district or highway districts in proportion to the mileage of such road in each such highway district, to be distributed in manner aforesaid.

The Turnpike Acts Continuance Act, 28 & 29 Vict. c. 107, enacts (s. 2) that the sections relating to encroachments on turnpike roads contained in the 3 Geo. IV., c. 126 (i.e., sections 118 & 124), "shall continue in force in relation to any road which, having been a turnpike road, may at any time after the passing of this Act become an ordinary highway in the same manner as if such road had continued to be a turnpike road; and in the construction of the said section the Highway Board shall be deemed to be the trustees or commissioners where the road is within the jurisdiction of a Highway Board, and in other cases the surveyor or other local authority having the care of the road shall be deemed to be such trustees or commissioners." By section 3 "it shall be the duty of the trustees or commissioners of a turnpike road that is about to become an ordinary highway to hold such meetings as may be necessary for the complete winding up of the affairs of their trust or commission, and any such meeting shall be legal if held at any time within two months after the time limited for the expiration of their trust or commission.

(s) With regard to the maintenance of existing bridges, and the construction of new bridges at the expense of the county, see 41 & 42 Vict. c. 77, ss. 21, 22, and notes, *post*, p. 206.

(t) It is only the repair of the *roads* that can be contracted for under this section; the contract cannot be made to extend to the repair of the structure of county or other bridges.

Provisions enabling urban sanitary authorities to undertake the maintenance of turnpike roads, roads repairable by individuals, and county bridges, the maintenance or construction of bridges over or under railways, tramways, or canals, or of roads through private lands, are contained in the 38 & 39 Vict. c. 55, ss. 146-148.

(u) See ss. 32-35, *post*.

*Amendment of s. 34 of Highway Act, 1862.*

23. Section thirty-four of the "Highway Act, 1862," shall be construed as if, instead of the words "shall be adjudged in the manner provided by the principal Act to be out of repair," the words were substituted, "shall be adjudged in manner provided by the Highway Act, 1862, to be out of repair." (v)

*Amendment of s. 35 of Highway Act of 1862.*

24. The Highway Board may apply, under section thirty-five of the "Highway Act of 1862," for the purpose of making any highway to which that section refers a highway to be repaired and maintained by the parish (w) in which the same is situate, and upon such application being made the same proceedings may be had as upon the application of the person or corporation liable to repair the same. (x) †

*Section 74 of 5 & 6 Wm. IV. c 50, repealed, and other provisions made as to Cattle found straying, &c., on Highways.*

25. The seventy-fourth section of the "Highway Act, 1835," shall be repealed, and instead thereof be it enacted, If any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is at any time found straying on or lying (y) about any highway, or across

(v) *Ante*, p. 112; see 25 & 26 Vict. c. 61, s. 18, as well as s. 34.

(w) The expenses of the repair of highways in highway districts will, after the 25th March, 1879, be defrayed out of the common fund, instead of being charged on the several parishes, except in certain special cases; see 41 & 42 Vict. c. 77, s. 7, *post*.

(x) Under s. 35 of the former Act only the person or corporation liable by reason of tenure of lands or otherwise to repair any highway situate in a highway district could apply to the justices for the purpose of making the highway a highway to be repaired and maintained by the parish; now, the Highway Board may make the application.

(y) With reference to the expressions "straying on or lying," see *Sherborn v. Wells*, 8 L. T. (N. S.) 274. The Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 54, imposes a penalty on all persons who, to the annoyance of passengers, shall turn loose any horse or cattle in a thoroughfare; and upon that enactment it was held in the above-mentioned case that where a person sent his cattle without a halter, but under the care of a boy, to graze on a highway, no offence was com-

any part thereof, or by the sides thereof, (z) (except on such parts of any highway as pass over any common or waste or uninclosed ground,) the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding five shillings, to be recovered in a summary manner, together with the reasonable expense of removing such animal from the highway where it is found to the fields or stable of the owner or owners, or to the common pound (if any) of the parish where the same shall be found, or to such other place as may have been provided for the purpose; Provided always, that no owner of any such animal shall in any case pay more than the sum of thirty shillings, to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorized keeper of the pound: Provided also, that nothing in this Act shall be deemed to extend to take away any right of pasturage which may exist on the sides of any highway. (a)

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mitted within the meaning of the Act, as the expression "turn loose" means leaving the cattle without control. In *Morris* app., *Jeffries* resp., L. R. 1 Q. B. 261, it was held that horses grazing on the side of a turnpike road with a man in charge of them, they being under his control, were not liable to be impounded under 4 Geo. IV. c. 95, s. 75, as "wandering, straying, or lying" about the road. But it is an offence under s. 25 of the present Act to allow cattle to lie about a highway, though in the charge and control of a keeper; *Laurence* app., *King* resp., L. R. 3 Q. B. 345, 37 L. J. M. C. 78.

The mere fact of a keeper being with sheep is not enough to prevent the liability, for the keeper might be negligent. But if sheep be driven along a road, and a cow is tired and the keeper lets it rest a little, no penalty will be incurred. The justices will be wrong if they convict on the mere fact that sheep are found straying on the highway, without considering whether the keeper was *bonâ fide* driving them, and merely stopped to take breath and rest temporarily.—*Horwood v. Goodall*, 36 J. P. 70.

(z) By "the sides" of the highway must be understood all the space for the ordinary carriage or foot-road over or along which the public have a right to pass.—See *Reg. v. United Kingdom Electric Telegraph Company (Limited)*, 2 B. & S. 647, 31 L. J. M. C. 166.

According to the opinion of the law officers of the Crown, referred to in Glen's "Highway Laws," second edition, p. 425, cattle found on a highway in contravention of 27 & 28 Vict. c. 101, s. 25, can be removed to the common pound.

(a) The above provision was introduced in the House of Lords. It now also applies to turnpike roads. See 34 & 35 Vict. c. 115, s. 20, *post*, p. 273.

*As to service of Notices issued by Highway Board.*

26. Any notice in respect of which no other mode of service is provided by the Highway Board in pursuance of powers in that behalf conferred on them, and any precept, summons, or order issued by the Highway Board, may be served,—

By delivery of the same personally on the party required to be served ; or

By leaving the same at the usual or last known place of abode of such party as aforesaid ; or

By forwarding the same by post as a prepaid letter addressed to the usual or last known place of abode of such party.

In proving service of a document by post it shall be sufficient to prove that the document was properly directed, (b) and that it was put as a prepaid letter into the post-office ; and in serving notice on the overseers or the waywardens

Where the right of pasturing cattle on the sides of a highway exists, the owner becomes liable to the penalty mentioned in s. 25 if the keeper under whose charge they are allows them to stray from the sides of the highway.—*Golding v. Stooking*, 38 L. J. M. C. 122, L. R. 4 Q. B. 516, 20 L. T. (N. S.) 479, 33, J. P. 278.

By a local Act a certain barrier bank made for drainage purposes in Lincolnshire, together with a road thereon, is vested in trustees, who are by the Act directed and required from time to time to let the herbage of the bank to be grazed with sheep only, at such yearly rent as can be reasonably had for the same. The road which runs along the top of the bank is an open public highway, and sheep owned by a rentor of the herbage and depastured on the sides of the barrier bank having been found upon the metalled part of the highway, the owner was held rightly convicted and fined under s. 25 of the Highway Act, 1864.—*Bothamley v. Danby*, 24 L. T. (N. S.) 656.

See also *Coverdale v. Charlton* (post, p. 214), as to the right of a Local Board to let the pasturage on strips of land at the side of a highway.

(b) Query, what will be considered evidence that the document was “properly directed?” The expression is extremely vague. If the document be intended for the overseers or waywardens of a parish, will it be “properly directed” without their names and addresses having been respectively written upon it ; or will it be sufficient to prove that it was simply directed to the overseers or to the waywardens of the particular parish without naming them ; and how if the post town of the parish be omitted, or the wrong post town added to the address of the document. As to the service of summonses or notices on a Highway Board, see 25 & 26 Vict. c. 61, s. 42, subsection 6.

(if more than one) of any parish it shall be sufficient to serve the same on any one of such officers in a parish. (c)

*Schedule to Highway Act of 1862 repealed, and other Regulations made.*

27. \* \* \* (d). The proceedings of Highway Boards shall, after the passing of this Act, be subject to the regulations contained in the first schedule to this Act annexed. (e)

*Amendment of s. 43 of Highway Act, 1862.*

28. \* \* \* \* \* (f)

*Qualification of ex-officio Waywardens.*

29. A justice of the peace acting for the county in which a highway district is situate, if he is resident in any place which is prohibited either altogether or without the consent of the local authority from being included in a highway district by the seventh section of the "Highway Act of 1862," and which is surrounded by or adjoins in any part such highway district, shall, by virtue of his office, be a member of the Highway Board of such district, (g)

(c) But any overseer or waywarden upon whom the notice was not served will not be liable for the neglect of his colleague on whom it was served. The proceedings should be taken against the particular overseer or waywarden who was served with the notice.

As to service of notice, &c., upon the Highway Board, see 25 & 26 Vict. c. 61, s. 42, subsection 6, *ante*.

(d) See 25 & 26 Vict. c. 61, s. 9, subsection 7. The first part of this section, repealing the schedule to the Act of 1862, so far as relates to the proceedings of Highway Boards, is repealed by the Statute Law Revision Act, 1875, as spent.

(e) See notes to this schedule and the schedule of 25 & 26 Vict. c. 61.

(f) This section is also repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66. See 25 & 26 Vict. c. 61, s. 43, *ante*, p. 121, and note.

(g) As to the constitution of Highway Boards, see 25 & 26 Vict. c. 61, s. 9, subsection 1. It will be seen that if the justice resides in a place which is not prohibited by 25 & 26 Vict. c. 61, s. 7, from being included in a highway district, he cannot under this section become *ex-officio* member of a highway district in which he does not reside.

qualification, that if in pursuance of this office of the peace would be entitled to be a member of one or more highway boards in the same parish, by letter under his hand, addressed to the Highway Board for which he elects to be a member, to be transmitted to the Clerk of the Peace of the county, declare of which of the said highway boards he elects to be a member, and having made that declaration he shall be bound thereby, and shall not be entitled by virtue of his office of justice to be a member of any other of the said boards.

*Appointment of Officers of Board.*

30. The appointment of any officer of a Highway Board may be made by a minute of the Board, signed by the chairman and countersigned by the Clerk of the Board, and any appointment so made shall be as valid as if it were made under the seal of the Board. (h)

*Power to appoint paid Collectors of Highway Rates.*

31. The power of appointing paid collectors of highway rates with the consent of the inhabitants in vestry assembled, which is vested in a surveyor by the "Highway Act, 1835," (i) and all the provisions of that Act relating to such appointment, (j) shall be vested in and extend to

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(h) See 25 & 26 Vict. c. 61, s. 12, and note thereon. Notwithstanding the present provision, the appointment of Clerk to the Highway Board must be by writing under seal, as in his case, the office being vacant, there would be no clerk competent to countersign the minute of appointment.

(i) Under 5 & 6 Wm. IV. c. 50, s. 36, the surveyor may from time to time appoint any number of collectors of highway rates, and may remove any collector and appoint another in his stead, and make such allowance to the collector out of the highway rates as the vestry shall think reasonable.

(j) The same powers, remedies, and privileges, for levying and enforcing payment of highway rates as are given to the surveyor, are also given by s. 34 of 5 & 6 Wm. IV. c. 50 to the collector; that is to say, the collector has, for the levying and recovering of the rates, the same powers, remedies, and privileges as overseers of the poor have by law for the recovery of the poor rate. But see s. 34, *post*. The surveyor, by s. 37, is required to take security by bond, but without stamp,

any waywarden required to levy rates in pursuance of the "Highway Act, 1862," and this Act, (*k*) or either of such Acts; and for the purposes of this Act (*l*) any meeting of ratepayers (*m*) entitled to elect a waywarden or waywardens shall be deemed to be included under the expression "inhabitants in vestry assembled," as used in this section, and the Highway Acts.

#### AS TO EXPENSES OF BOARD.

*Repeal of sections 20, 21, 22, 23, and 24 of Highway Act, 1862.*

32. \* \* \* \* \*

#### *Expenses, how to be charged.*

The salaries of the officers appointed for each district, and any other expenses incurred by any Highway Board, for the common use or benefit of the several parishes within such district, shall be annually charged to a district fund to be contributed by and charged upon the several highway parishes within such district in proportion to the rateable value of the property in each parish, (*o*) but the

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for every collector, to the full amount of the sum likely to be in his hands at any one time. Further, by s. 39 of 5 & 6 Wm. IV. c. 50, the surveyor is required to keep separate and distinct accounts of the moneys levied for the highway rate, and he must specify in them the different sums and the times when, and the persons to whom and by whom they shall have been collected and paid.

(*k*) Section 22 of 25 & 26 Vict. c. 61, which required the waywarden to levy rates in certain cases, is repealed by s. 32, *post*.

See also s. 33, *post*, second subdivision.

(*l*) That is, for all purposes of the Act—not of this section only.

(*m*) With regard to this provision, see 25 & 26 Vict. c. 61, s. 10, third subdivision.

(*n*) The first part of this section, repealing ss. 20–24 of the Highway Act, 1862, is now repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66, without however reviving those repealed enactments.

(*o*) Under s. 20 of the former Act the district fund was to be contributed to and charged upon the several parishes in proportion to the average of the expenditure incurred during the three last preceding years in maintaining and repairing the highways. The present Act,

*expenses of maintaining and keeping in repair the highways of each highway parish within the district, and all other expenses legally payable by the Highway Board in relation to such parish, including any sums of money that would have been payable out of the highway rates of such parish if the same had not become part of a highway district, except such expenses as are in this Act authorized to be charged to the district fund, shall be a separate charge on each parish. (p)*

The rateable value of the property in each parish shall be ascertained according to the valuation list (q) or other estimate (r) for the time being in force in such parish for the purposes of the poor rate, or if no such valuation list or estimate (r) be in force, then in such manner as may be

as well as the Act of 1878, it will be seen, substitutes the rateable value of property in each parish for the averages.

One half of the maintenance of certain highways, formerly turnpike roads, is also charged on this fund. See 33 & 34 Vict. c. 73, s. 10, 37 & 38 Vict. c. 95, s. 10, and 41 & 42 Vict. c. 77. s. 13. *post.*

(p) With regard to the portion of this section which is printed in italics it must be remembered that by s. 7 of the 41 & 42 Vict. c. 77, except in certain special cases there mentioned "all expenses incurred by any Highway Board in maintaining and keeping in repair the highways of each parish within their district, and all other expenses legally incurred by such board, shall, notwithstanding anything contained in the Highway Acts, on and after the 25th day of March, 1879, be deemed to have been incurred for the common use or benefit of the several parishes within their district, and shall be charged on the district fund."

(q) As regards the Valuation List of the parish, see the 25 & 26 Vict. c. 103, and 27 & 28 Vict. c. 39.

When the highway district consists of parishes comprised in different poor law unions, there is no power given by this Act or by the Union Assessment Committee Acts to secure that the assessments of parishes in different unions are all made upon the same principle. It is obvious that in such a case, if the parishes in one union are undervalued, the parishes in the union which are valued upon a higher principle will be unduly burdened with the cost of the district fund of the Highway Board.

(r) To say that an "estimate" of the rateable value is "in force" for the purposes of the poor rate is an incorrect expression. If there be no Valuation List in force, the overseers must make the poor rate upon an estimate of the rateable value, according to 6 & 7 Wm. IV. c. 96, s. 1; and probably it is the rateable value according to the last poor rate made in the parish, which is intended. But in every parish there must either be a Valuation List or "other estimate" upon which the poor rate is made. No estimate of the rateable value could be formed without a valuation of the several properties in the parish,



determined by the justices in petty sessions, subject to an appeal by any person aggrieved to the next general or quarter sessions.

*Mode of defraying Expenses of the Highway Board.*

33. For the purpose of obtaining payment from the several highway parishes within their district (*s*) of the sums to be contributed by them, the Highway Board (*t*) shall order precepts to be issued to the waywardens or overseers (*u*) of the said parishes according to the provisions hereinafter contained, stating the sum to be contributed by each parish, and requiring the officer to whom the precept is addressed, within a time to be limited by the precept, to pay the sum therein mentioned to the treasurer of the Board.

Where a highway parish is not a parish separately maintaining its own poor, or where in any highway parish it has, for a period of not less than seven years immediately

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the expense of which the Act nowhere provides for. Again, as to the appeal to the quarter sessions, apparently it might either be by a ratepayer of the particular parish alleging that the property is too highly valued, or by a ratepayer of some other parish in the district alleging that the estimate of the rateable value is too low.

(*s*) As to the repayment to the Highway Board by the County Authority of one half of the expenses incurred by the Highway Board in the maintenance of disturnpiked and other main roads within their district, see 41 & 42 Vict. c. 77, s. 13, *post*, p. 199.

Any expenses incurred by the Highway Board by reason of the damage arising from excessive weight passing along a highway, or extraordinary traffic on it, may be recovered in a summary manner from any person by whose order such weight or traffic has been conducted; 41 & 42 Vict. c. 77, s. 23, *post*, p. 207.

(*t*) This and the two following sections will not apply to a rural sanitary authority which has been invested with the powers of a Highway Board, for by s. 5, subs. (3) of the 41 & 42 Vict. c. 77 "all the expenses incurred by a rural sanitary authority in the performance of their duties as a Highway Board shall be deemed to be general expenses of such authority within the meaning of the Public Health Act, 1875," and the mode of defraying such general expenses is provided for by ss. 229-231 of the last-mentioned Act, which will be found in note (*i*), *post*, p. 185.

(*u*) The Act only mentions "overseers," but in the case of a parish in which the churchwardens are *ex-officio* overseers of the poor, the precept should be addressed to them also. As to the service of the precepts, see s. 26 of this Act.

preceding the passing of the "Highway Act, 1862," been the custom of the surveyor of highways for such parish to levy a highway rate in respect of property not subject by law to be assessed to poor rates, (*v*) the precept of the Highway Board shall be addressed to the waywarden of the parish, and in all other cases it shall be addressed to the overseers.

Where the precept is addressed to a waywarden he shall pay the sum thereby required out of a separate rate, (*w*) and such separate rate shall, in the case of a parish in which for such period aforesaid it has been the custom of the surveyor of highways to levy a highway rate in respect of property not subject by law to be assessed to poor rate, be assessed on and levied from the persons and in respect of the property on, from, and in respect of which the same has been assessed and levied during such period as aforesaid, and in all other cases such rate shall be assessed on and levied from the persons and in respect of the property on, from, and in respect of which a poor rate would be assessable and leviable if the parish of which he is waywarden were a place separately maintaining its own poor.

No rate leviable by a waywarden under this Act shall be payable until the same has been published in manner in which rates for the relief of the poor are by law required to be published. (*x*)

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(*v*) The custom must have existed on the 29th July, 1855, *i.e.*, seven years previous to the passing of the 25 & 26 Vict. c. 61.

See also the Rating Act, 1874, under which mines, underwood, and rights of sporting may now be rated.

(*w*) The Act is silent as to the basis of this rate. The Valuation List of the parish should be adopted in respect of the property which is liable to the poor rate, see 25 & 26 Vict. c. 103, s. 28.

(*x*) By 17 Geo. II. c. 3, s. 1, the churchwardens and overseers "shall give, or cause to be given, public notice in the church of every rate for the relief of the poor allowed by the justices of the peace the next Sunday after the same shall have been so allowed;" but now, instead of the notice in church, by 1 Vict. c. 45, s. 2, it is to be reduced into writing, and copies thereof, either in writing or in print, or partly in writing and partly in print, are to be affixed previously to divine service, on or near to the doors of all the churches and chapels within the parish or place. It will be seen that under this Act the rate is not required to be allowed by the justices as a poor rate is allowed, but that it must be published. By 5 & 6 Wm. IV. c. 50, s. 27, a highway rate was to be allowed by two justices, as well as published.

A waywarden shall account to the Highway Board for the amount of all rates levied by him, and at the expiration of his term of office shall pay any surplus in his hands arising from any rate so levied, above the amount for which the rate was made, to the treasurer of the Highway Board, to the credit of the parish within which such rate was made, and such surplus shall go in reduction of the next highway rate that may be leviable in such parish.

Where the precept is addressed to the overseers they shall pay the sum thereby required out of a poor rate to be levied by them, or out of any moneys in their hands applicable to the relief of the poor. (y)

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It should be observed that the mere production of the rate book is not sufficient evidence of due publication of a highway rate, although it is *prima facie* evidence in the case of a poor rate. *Bird v. Adcock*, 26 W. R. 634; 42 J. P. 308.

Appeals against the rate are provided for by s. 37, *post*.

(y) *Exemption from highway rates since the Highway Act of 1862—Form of poor rate with highway purposes.*—The township of W. separately maintains its own poor, and the hamlet of G., within the township, from time immemorial had separately maintained its own highways. H. was an occupier of land within the hamlet, the owners and occupiers of which from time immemorial had been exempt from contributing to the repairs of the highways by reason of their repairing a particular road in the hamlet; but the occupiers of the land had always been rated to the relief of the poor. The quarter sessions, under the 25 & 26 Vict. c. 61, divided the county into highway districts, and ordered, under sect. 7, that “in case any township which separately maintains its own poor is divided into any hamlets, &c., each of which separately maintains its own highways, such hamlets, &c., shall be combined, and such township shall be subject to the same liabilities in respect of all the highways within it which were before maintained by such hamlets, &c., as if all their several liabilities had attached to the whole township.” The Highway Board for the division in which W. was situate issued their precept, under sect. 21, to the overseers requiring them to pay to the treasurer a certain sum, by two instalments, towards the repairs, &c., of the highways within the township, including those in the hamlet of G., and the overseers made a rate, headed “an assessment for the relief of the poor of the township of W., and for other purposes chargeable thereon, at the rate of 1s. in the pound.” This rate was made upon every occupier of property liable to be rated to the relief of the poor, including H., the sum charged upon each being one sum, at the rate of 1s. in the pound. Of this the amount required for the payment of the first instalment under the precept was 4d. in the pound, and 8d. in the pound for the relief of the poor. H. having appealed against this rate on the ground that, being exempt from highway rates, he ought to have been assessed at 8d. only: Held, that

No contribution required to be paid by any parish at any one time in respect of highway rates shall exceed the sum of tenpence in the pound, (z) and the aggregate of contributions required to be paid by any parish in any one year in respect of highway rates shall not exceed the sum of two shillings and sixpence in the pound, (z) except with the consent of four-fifths of the ratepayers of the parish in which such excess may be levied present at a meeting specially called for the purpose, of which ten days previous notice has been given by the waywarden of such parish, (a) and then only to such extent as may be determined by such meeting. (b)

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the effect of the 25 & 26 Vict. c. 61, coupled with the 5 & 6 Wm. IV. c. 50, s. 33, was not to alter the liability to highway maintenance; and that the rate ought to be amended by reducing the appellant's assessment to 8d. in the pound. *Semble*, that the amount assessed for the highways should appear on the face of the rate, so that the ratepayers may see how much is for the maintenance of the poor and how much for the repair of the highways; and why one occupier, who is liable to both, is charged with the aggregate, and another, who is liable to one only, with that one.—*Reg. v. Heath*, L. R. 1 Q. B. 218, 13 L. T. (N. S.) 669, 7 B. & S. 285, 35 L. J. M. C. 113, 12 Jur. (N. S.) 355.

The most practical mode of carrying out the effect of this decision will apparently be for the overseers to enter in the rate-book as irrecoverable the amount claimed in respect of the exemption.

In the case of *Rollett*, app. v. *Overseers of Corringham*, resps. (32 L. T. (N. S.) 769; s. c. *Reg. v. Rollett*, 44 L. J. M. C. 190), the appellant, who was occupier of a farm forming part of a township, claimed exemption from the highway rates of the township. It was proved that the owners and occupiers had never in the memory of man paid highway rates, or done team work, or paid any composition in lieu thereof in respect of this farm; and that the farm from the time of Domesday book had been a known district and included lands and premises of different persons; but it was not proved that any highways had ever existed in the district. Held (Lush, J., *diss.*), that this was not sufficient to establish the existence of an immemorial usage to charge this district with repair of its own highways, and to exempt it from contribution to the repair of highways without its own limits.

(z) That is on the rateable value of the property in the parish. See notes to the last subdivision of s. 32, *ante*.

(a) This notice should be given in the same way that notices of vestry meetings are given, only that it must be given by the waywarden. The meeting will in fact be a vestry-meeting, and will be presided over by the incumbent of the parish, if he be present thereat.

(b) The limitation as to the amounts to be called for by the Highway Board is in conformity with 5 & 6 Wm. IV. c. 50, s. 29, and the South Wales Highway Act, 23 & 24 Vict. c. 68, s. 23. It will be

All sums of money payable in pursuance of the precepts of a Highway Board shall, whether they are or not payable by the overseers of the poor, be subject to all charges to which ordinary highway rates are subject by law.

*Power to levy Rates for making Payments to Highway Board.*

34. All waywardens and overseers to whom precepts of a Highway Board are hereby directed or authorized to be issued shall within their respective parishes have the same powers, remedies, and privileges, for and in respect of assessing and levying any rates required to be levied for making payments to a Highway Board, in the case of overseers, as they have in assessing and levying ordinary rates for the relief of the poor, and in the case of waywardens as they would have if the parish of which they are waywardens were a place separately maintaining its own poor, and they were overseers thereof, and the rate to be levied by them were a duly authorized poor rate. (c)

*Mode of enforcing Payments to Highway Boards.'*

35. If any payment required to be made by the overseers or waywardens of any parish of moneys due to a highway Board is in arrear, it shall be lawful for any justice, on application under the hand of the chairman for the time being or by the Clerk of such Board, (d) to summon the said overseers or waywardens to show cause at petty sessions why such payment has not been made; and the

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necessary for the Highway Board, in making their precepts, to see that they do not call on any parish for a sum exceeding the prescribed limit.

(c) As to the powers, remedies, and privileges of overseers for and in respect of assessing and levying poor rates, see 43 Eliz. c. 2, s. 4; 17 Geo. II. c. 38, ss. 7-12; 41 Geo. III., c. 23, ss. 1, 2, 3, 7; 54 Geo. III., c. 170, s. 12; 57 Geo. III., c. 93; 7 & 8 Geo. IV. c. 17; 12 Vict. c. 14; 23 & 24 Vict. c. 68, s. 22; they will be found in Glen's "Poor Law Statutes," vols i. and ii. See also *Bird v. Adcock*, ante, p. 153.

(d) Under 25 & 26 Vict. c. 61, s. 24, the application could only be under the hand of the chairman—now the Clerk may make it; but, except under very special circumstances, he should not initiate the proceedings unless in pursuance of a resolution of the Highway Board.

justices at such petty sessions, after hearing the complaint preferred on behalf of the Board, may, if they think fit, cause the amount of payment in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the said overseers or waywardens, or any of them, in like manner as moneys assessed for the relief of the poor may be levied and recovered, (e) and the amount of such arrear, together with the costs aforesaid, when levied and recovered, to be paid to the said Board. (f)

### ACCOUNTS OF BOARD.

*Sects. 25, 26, and 30 of Highway Act, 1862, repealed, and other Provisions substituted.*

36. \* \* \* \* \*

Within thirty days after the signature of the accounts by the chairman (h) the Board shall cause a state-

(e) That is by distress and sale of the goods of the waywarden or overseer, and, in default, committal for a period not exceeding three calendar months. See 12 Vict. c. 14, s. 2, in Glen's "Poor Law Statutes," vol. 2.

(f) Neither the waywarden nor the overseer will be entitled to pay these costs out of the public money under their control.

A Highway Board have no power to incur expenses in opposing a Bill in Parliament, even where a Bill (promoted by turnpike trustees) would affect some of the parishes in the district, and the opposition might be successful.—*Reg. v. Kingsbridge Highway Board*, 18 L. T. (N. S.) 554. See also *Mill v. Hawker*, ante, p. 95.

But the costs of an indictment for an obstruction to a highway are such costs as a Highway Board are justified in incurring, to remove the obstruction; and in the particular case it was held that such costs were properly chargeable against the parish where the highway lay.—*Reg. v. Heath*, 6 B. & S. 578, 12 L. S. (N. S.) 492.

(g) The first part of this section already partly repealed by the Statute Law Revision Act, 1875, is repealed by 41 & 42 Vict. c. 77, s. 9 (*post*, p. 195), though not so as to revive ss. 25, 26, and 30 of the Highway Act, 1862, which it repealed. Provision was made by the repealed part of the section for the making up of the accounts to the 31st of December, for their examination by the Board, and for their audit, if the Board thought fit, by an independent person. Now the accounts are to be made up to the 25th of March, and audited by the auditor of accounts relating to the relief of the poor, see 41 & 42 Vict. c. 77, s. 9, and notes, *post*, pp. 189–196.

(h) By 41 & 42 Vict. c. 77, s. 9, (*post*, p. 195), the statement here mentioned is to be furnished within thirty days after the completion of the audit of the accounts of the Highway Board by the auditor of the accounts relating to the relief of the poor. The words in italics

ment showing the receipt and expenditure in respect of each parish, and the apportioned part of expenditure chargeable thereto in respect of the district fund, and such other particulars and in such form as the Secretary of State (i) may direct, (j) to be printed, and sent by post or otherwise to each member of the Board, and to the overseers of every parish within the district having overseers; and the clerk of the Board shall furnish a copy of such statement to any ratepayer or owner of property situate within the district, on his application, and on the payment of a sum not exceeding one penny.

The books of account of the Board shall at all seasonable times be open to the inspection of any ratepayer of any Highway parish within the district of the Board. (k)

*Persons aggrieved by Rates levied may appeal in manner provided by 6 & 7 Wm. IV. c. 96.*

37. If any person feels aggrieved by any rate (l) levied on him for the purpose of raising moneys payable under a precept of a Highway Board on the ground of incorrectness in the valuation of any property included in such rate, or of any person being put on or left out of such rate, or of

referred to the signature of the accounts by the chairman after their examination by the Board under the repealed part of the section.

(i) Now the Local Government Board. See 38 & 39 Vict. c. 55, Sch. V, part iii., *post*, p. 280.

(j) As to this form, see 25 & 26 Vict. c. 61, s. 29, *ante*. See also ss. 27, 28, of the same Act, and notes, as to the returns to be made to the Local Government Board and to Parliament.

(k) Therefore any ratepayer may, at any "seasonable" time either before or after the audit, and at any "seasonable" time during the year, inspect the books of account of the Board. But whether the current books of account are referred to, or how far back the inspection may extend, the Act does not state. It will be observed that it is only of the books of account of *the Board* that inspection can be demanded.

(l) That is any rate levied by a waywarden under s. 33, *ante*. Appeals against poor rates, out of which in certain cases the precepts of the Highway Board are payable by overseers, are otherwise provided for.

the inequality or unfairness of the sum charged on any person or persons therein, he may appeal to the justices in special sessions in manner provided by the Act of the session of the sixth and seventh years of the reign of His Majesty King William the Fourth, chapter ninety-six, sections six and seven, (m) and all the provisions of the said sections shall be applicable to such appeal.

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(m) The following are the sections of 6 & 7 Wm. IV. c. 96, here referred to:—

Sec. 6. "And be it enacted, that the justices acting in and for every petty sessions division shall four times at least in every year hold a special session for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the parish church of the said parishes, twenty-eight days at the least before the holding of the same; and such special sessions shall and may be adjourned from time to time by the justices there present, as they may think fit; and at such special or adjourned sessions the justices there present shall hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness in the value of any hereditaments included therein, which decision shall be binding and conclusive on the parties, unless the person or persons impugning such decision shall, within fourteen days after the same shall have been made, cause notice to be given in writing of his or her or their intention of appealing against such decision, and of the matter or cause of such appeal, to the person or persons in whose favour such decision shall have been made, and within five days after giving such notice, shall enter into a recognizance before some justice of the peace, with sufficient securities conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party or parties appealing, or appealed against, as they shall think proper; and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever. Provided always, that no such objection shall be inquired into by the said justices in special session, unless notice of such objection in writing, under the hand of the complainant, shall have been given seven days at least before the day appointed for such special session to the collector, overseers, or other persons by whom such rate was made. Provided also, that the said justices in special session shall not be authorized to inquire into the liability of any hereditaments to be rated, but only into the true value thereof, and into the fairness of the amount at which the same shall have been rated.

Sec. 7. "And be it enacted, that the justices present at any such



*Power to appeal to Quarter Sessions against items of Expense and Expenditure, &c.*

38. Where any waywarden of a highway parish of a district, or any ratepayer of such parish, feels aggrieved in respect of the matters following:—

- (1.) In respect of any order of the Highway Board for the repair of any highway in his parish on the ground that such highway is not legally repairable by the parish, (n) or in respect of any other order of the Board on the ground that the matter to which such order relates is one in regard to which the Board have no jurisdiction to make an order;
- (2.) In respect of any item of expense charged to the separate account of his parish on the ground that such item of expense has not in fact been incurred or has been incurred in respect of a matter upon

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special or adjourned session shall for the aforesaid purpose have all the powers of amending or quashing any such rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of the parties, and of recovering such costs which any court of quarter sessions of the peace has upon appeals from any such rate, except as is herein excepted. Provided always, that no order of the said justices shall be removed by *certiorari* or otherwise into His Majesty's courts of record at Westminster. Provided also, that nothing in this Act contained shall be construed to deprive any person or persons of the right to appeal against any rate to any court of general or quarter sessions. Provided also, that no order of the said justices in special session shall be of any force pending any appeal touching the same subject-matter to the court of general or quarter sessions of the peace having jurisdiction to try such appeal, or in opposition to the order of any such court upon such appeal."

(n) Under this provision, in cases where the Highway Board make an order for the repair of any highway, the liability of the parish to the repair of which is in dispute, the validity of the order may be questioned on appeal. It is the converse of the case where the parish is indicted for non-repair of a road, and disputes that the road is a highway repairable by the parish. Now if the Board improperly undertake the repair of a highway at the expense of the ratepayers, they will do so at the risk of an appeal. It is, however, difficult to see what "order" the Board could make in the case. Probably the word "order" may be read "direction." Apparently, if the district surveyor should repair the highway without any special order of the Board, an appeal would not lie; but notice the limitation in s. 39 (1) as to the time of appeal.

which the Board have no authority by law to make any expenditure whatever; (o)

- (3.) In respect of any item of expenditure charged to the district fund on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the Board have no authority by law to make any expenditure whatever;

- (4.) In respect of the contribution required to be made by each parish to the district fund on the ground that such amount, when compared with the contribution of other parishes in the district, is not according to the proportion required by this Act; (p)

he may, upon complying with the conditions hereinafter mentioned, (q) appeal to the court of general or quarter sessions (r) having jurisdiction in the district; but no appeal shall be had in respect of any exercise of the discretion of the Board in matters within their discretion; and no appeal shall be had except in respect of the matters and upon the grounds hereinbefore mentioned. (s)

### *Conditions of Appeal to General or Quarter Sessions.*

39. No appeal shall be entertained by any court of general or quarter sessions in pursuance of this Act unless the following conditions have been complied with:

- (1.) Notice of the intention of appeal must be served by the appellant on the clerk of the Highway Board in the case of an appeal against an order within two months after the order, (t) and in the case of an

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(o) All expenses legally incurred by a Highway Board, save in certain exceptional cases, will after the 25th March, 1879, be charged to the district fund, and not to the separate accounts of the parishes; see 41 & 42 Vict. c. 77, s. 7. *post*, p. 187.

(p) As to such proportion, see s. 32, *ante*.

(q) See s. 39, *post*.

(r) Probably the next practicable sessions is intended.

(s) It will be seen, therefore, that there will be no appeal against excessive expenditure in respect of a matter in which the Board has authority by law to make some expenditure.

(t) In general the ratepayers would know nothing of the making of the order; therefore the waywarden must look after the interests of his parish in this respect.

appeal in respect of any item of expense or contribution within one month after the statement of the account of the Board has been sent to each member of the Board as hereinbefore mentioned: (u)

- (2.) The notice must state the matter appealed against, and the ground of the appeal:

On the receipt of the notice the Board may serve a counter notice on the appellant, requiring him to appear in person or by his agent (v) at the next meeting of the Board and support his appeal. On hearing the appellant the Board may rectify the matter complained of, (w) and if they do so to a reasonable extent, (x) and tender to the appellant a reasonable sum for the costs of his attendance, it shall not be lawful for the appellant to proceed with his appeal. In any other case the appellant may proceed with his appeal, and the reasonable costs of his attendance on the Board shall be deemed part of the costs of the appeal.

*Power to refer Case to Arbitration.*

40. If at any time after notice of appeal has been given it appears to the court of general or quarter sessions, on the application of either party in the presence of or after notice has been given to the other party, (y) that the

(u) See s. 36, last subdivision but one, *ante*.

(v) The "agent" need not necessarily be a solicitor; but looking at the difficulty of the questions which would have to be dealt with, any other than a professional man could scarcely deal with them properly on behalf of his principal.

(w) If the appeal be against an order to repair the highway, the Board may rectify the matter by simply abandoning the order; but if it be a matter of account, the manner of rectifying it will be more difficult. It can scarcely happen that a public body such as a Highway Board would charge in their accounts expenses which had not in fact been incurred; but when they have incurred expenses without any authority in law, to "rectify the matter complained of" they must refund the money illegally expended; but how? by subscription amongst the members of the Board, or individually? The Act, in fact, fails to provide any practical mode of dealing with such a case.

(x) The Board will be the judge of what is "a reasonable extent" within the meaning of this provision.

(y) This reference will only arise when the Board have refused to rectify the matter complained of under s. 39.

matter in question in such appeal consists wholly or in part of matters of mere account which cannot be satisfactorily tried by the court, it shall be lawful for such court to order that such matters, either wholly or in part, be referred to the arbitration of one or more persons, to be appointed by the parties, or, in case of disagreement, by the court; and the award made on such arbitration shall be enforceable by the same process as the order of the court of quarter sessions. (z)

*Provisions of 17 & 18 Vict. c. 125, incorporated.*

41. The provisions of "The Common Law Procedure Act, 1854," relating to compulsory references, (a) shall be deemed to extend to arbitrations directed by the court of quarter sessions; and the word "court" in the said Act shall be deemed to include the court of quarter sessions.

*Proceedings on Appeal.*

42. If upon the hearing of the appeal it appears to the court that the question in dispute involves an inquiry as to whether a road is or is not a highway repairable by the public, or an inquiry as to any other important matter of fact, the court may either themselves decide such question, or may impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions, and submit to such jury such questions in relation

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(z) By statute 12 & 13 Vict. c. 45, s. 18, "in all cases where any order shall be made by any court of general or quarter sessions of the peace, it shall be lawful for the Court of Queen's Bench, or for any judge of that court at chambers, either in term or vacation, upon the application of any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the clerk of the peace or his deputy, and upon proof of refusal or neglect to obey such order, to order and direct such order of the court of general or quarter sessions to be removed into the said Court of Queen's Bench; and thereupon such order shall be of the same force and effect, and may be enforced in the same manner, as a rule made by the said Court of Queen's Bench; and all the reasonable costs and charges attendant upon such application and removal shall be recoverable in like manner as if the same were part of such order."

(a) See ss. 3-17 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), in the Appendix, pp. 293-296.

to the matters of fact in dispute as the court think fit; and the verdict of such jury, after hearing the evidence adduced, shall be conclusive as to the questions submitted to them.

The questions so submitted shall be in the form and shall be tried as nearly as may be in the manner in which feigned issues are ordinarily tried, (b) and the court shall decide the parties to be plaintiffs and defendants in such trials.

Subject as aforesaid, the court may, upon the hearing of any appeal under this Act, confirm, reverse, or modify any order of the Highway Board, or rectify any account appealed against.

### *Costs of Appeal.*

43. If the appellant is successful, the costs shall, unless the court otherwise orders, be paid by the Board, and shall

(b) A feigned issue is a proceeding whereby an action is supposed to be brought by consent of the parties to determine some disputed right, without the formality of pleading, saving thereby both time and expense. It may be ordered either by a court of law or equity, or by a judge under the Interpleader Act, 1 & 2 Wm. IV. c. 58. The 8 & 9 Vict. c. 109, s. 19, after reciting that many important questions are now tried in the form of feigned issues, by stating that a wager was laid between two parties interested in respectively maintaining the affirmative and the negative of certain propositions, but that such questions may be as satisfactorily tried without such form, enacts, that in every case where any court of law or equity may desire to have any question of fact decided by a jury, it shall be lawful for such court to direct a writ of summons to be sued out by such person or persons as such court shall think ought to be defendant or defendants therein, in the form set forth in the second Schedule to the Act annexed, with such alterations or additions as such court may think proper; and thereupon all the proceedings shall go on and be brought to a close in the same manner as is now practised in proceedings upon a feigned issue.

The second Schedule of the 8 & 9 Vict. c. 109 is as follows:—

“In the Court of Queen’s Bench [Common Pleas, or Exchequer, or in any inferior court as the case may be]. (Now, In the High Court of Justice, Queen’s Bench, Common Pleas, or Exchequer Division, or in any inferior court.)

“Middlesex to wit [or such other county as may be directed].

“Whereas A. B. affirms, and C. D. denies [here state fully the fact or facts in issue] and the Lord Chancellor [or such other court, &c.] is desirous of ascertaining the truth by the verdict of a jury, and both parties pray that the same may be inquired of by the country. Now let a jury,” &c.

be charged to the parishes within the jurisdiction of the Board other than the parish to which the appellant belongs in the same proportions in which such parishes contribute to the common fund of the Board. (c)

If the appellant is unsuccessful, the Board, if the waywarden be the appellant, may charge the costs of the appeal to the parish to which the appellant belongs in the same manner as if they were expenses incurred in repairing the roads in such parish, (c) and may levy the sum accordingly, and may carry the sum so levied to the account of the several parishes within the jurisdiction of the Board, other than the parish to which the appellant waywarden belongs, in the same manner as if they were expenses contributed by such parishes to the common fund of the Board; but if some ratepayer other than the waywarden is the appellant, the court may order the costs of the appeal to be paid by such appellant; and such costs shall be recoverable in the same manner as a penalty is recovered under "The Highway Act, 1862." (d)

*Jurisdiction as to Districts in different Counties.*

44. Places situate in different counties, and places situate

(c) It is enacted by the 41 & 42 Vict. c. 77, s. 7 (*post*, p. 187), that all expenses incurred by any Highway Board in maintaining and keeping in repair the highways of each parish within their district, and all other expenses legally incurred by such Board, shall, notwithstanding anything contained in the Highway Acts, on and after the 25th day of March, 1879, be deemed to have been incurred for the common use or benefit of the several parishes within their district, and shall be charged on the district fund. The effect of this amendment on s. 43 is not free from doubt, but it would appear that where the appellant is successful, the costs must be paid out of the district fund, and so charged on the whole district. But in the case of a waywarden being appellant and being successful, the costs are not incurred by the Board, and though the expenses of the repair of roads in the parish will not be charged on the parish, the words, "in the same manner as if they were expenses incurred in repairing the roads in each parish," may perhaps be treated as repealed by the new Act, so that the costs may still be charged to the parish in addition to their ordinary contribution; at any rate, the new Act does not prevent the Highway Board from giving credit for the amount of the costs to the parishes other than that to which the appellant waywarden belongs, in the same manner as if it formed part of their contributions to the district fund.

(d) See 25 & 26 Vict. c. 61, s. 47, *ante*.

partly in one county and partly in another county, when united in one highway district, shall, for all matters connected with the provisions of this Act relating to appeals to quarter sessions against accounts, be deemed to be subject to the jurisdiction of the justices of the county in which the district is situate to which such places shall have been united by any provisional and final order or orders, or to which after the passing of this Act any such district shall be declared to be subject by the orders constituting the same, in the same manner as if all such places were situate in such county. (e)

#### SUPPLEMENTAL PROVISIONS.

##### *In case of default of Highway Board appointing Officers.*

45. If the Highway Board of a district make default in appointing a treasurer, clerk, and district surveyor, or any of such officers, in pursuance of the "Highway Act, 1862," (f) within three months after the day fixed by the justices for the holding of the first meeting of the Board, or within three months after a vacancy occurring in any of the said offices, the justices in general or quarter sessions assembled may, if they think fit, appoint a person to any of the said offices in respect of which the default has been made, and may fix the salary to be paid to the officer appointed; and any such appointment shall take effect and salary be recoverable in the same manner as if the officer appointed by the justices had been appointed by the Highway Board of the district; and it shall not be lawful for such Board, without the consent of the said justices, to remove any officer appointed by them under this section, or to lessen his salary within one year from the date of his appointment.

##### *Jurisdiction of Justices in Petty Sessions.*

46. The justices assembled in petty sessions at their usual place of meeting may exercise any jurisdiction which they are authorized under the Highway Acts or any of them to

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(e) It is only with regard to appeals against accounts that this provision applies.

(f) See 25 & 26 Vict. c. 61, s. 12, *ante*.

exercise in special sessions; (g) and no justice of the peace shall be disabled from acting as such at any petty or special or general quarter sessions in any matter merely on the ground that he is by virtue of his office a member of any Highway Board complaining, interested, or concerned in such matter, or has acted as such at any meeting of such Board. (g)

*Power of Highway Board to make Improvements and borrow Money for the same, but previously to cause an Estimate to be made.*

47. A Highway Board may make such improvements (h) as are hereinafter mentioned in the highways within their jurisdiction, and may, with the approval of the justices in general or quarter sessions assembled, borrow money for the purpose of defraying the expenses of such improvements:

Previously to applying for the approval of the justices the Highway Board shall cause an estimate of the expense of the improvements to be made, and two months at the least before making their application shall give notice of their intention so to do.

The notice shall state the following particulars:

- (1.) The nature of the work, the estimated amount of expense to be incurred, and the sum proposed to be borrowed:
- (2.) The parish or parishes within the district by which the sum borrowed and the interest thereon is to be paid, and in case of more parishes than one being made liable to pay the principal and interest the annual amounts to be contributed by each parish towards the payment thereof: (i)

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(g) As regards the holding of special sessions for the highways, see 5 & 6 Wm. IV. c. 50, s. 45, in Glen's "Treatise on the Law of Highways," second edition.

The justice may not act as such in any matter in which he has already acted as a member of the Highway Board, and in which the decision of the Board is appealed against; see 25 & 26 Vict. c. 61, s. 38, and note, *ante*, p. 115.

(h) "Improvements" are defined by s. 48, *post*, and the abolition of turnpike tolls is within the meaning of the term as used here and in ss. 48 & 50; see 35 & 36 Vict. c. 85, s. 15, and 36 & 37 Vict. c. 90, s. 16, *post*.

(i) Since all moneys borrowed after the 25th of March, 1879, are by



- (3.) The number of years within which the principal moneys borrowed are to be paid off, not exceeding twenty years, and the amount to be set apart in each year for paying off the same :
- (4.) The sessions at which the application is to be made.
- Notice shall be given as follows :

- (1.) By transmitting a copy to the Clerk of the Peace for the county or division :
- (2.) By placing a copy of each notice for three successive *Sundays* on the church door of every church (*j*) of the parish or parishes on behalf of which such works are to be done, or, in case of any place not having a church, in some conspicuous position in such place. (*k*)

Upon the hearing of the application any person or persons may oppose the approval of the justices being given, and it shall be lawful for the justices to give or withhold their approval, with or without modification, as they think just.

All moneys borrowed in pursuance of this Act, together with the interest thereon, *shall be a first charge on the highway rates of each parish liable to contribute to the payment thereof, after paying the sums due to the Highway Board on account of the district fund, in the same manner, so far as the creditor is concerned, as if the money had been borrowed on account of each parish alone; and the sums necessary to repay the said borrowed moneys, with interest, shall in each such parish be recoverable in the same manner as if they were expenses incurred by the Board in keeping in repair the highways of that parish.* (*l*)

41 & 42 Vict. c. 77, s. 8, to be charged on the district fund, and not on the highway rates of the separate parishes, the notices relating to the borrowing of such moneys should enumerate all the parishes in the district.

(*j*) This must be construed as referring to the Established Church, *Ormerod v. Chadwick*, 16 M. & W. 367, and *Ex parte Warblington*, 18 Jur. 494.

(*k*) As for instance a dissenting chapel or other public building or place.

(*l*) The portion of the above clause which is printed in italics will not apply to moneys borrowed after the 25th of March, 1879, for by the 41 & 42 Vict. c. 77, s. 8 (*post*, p. 189), all moneys borrowed by a Highway Board after that date shall be charged on the district fund. This provision, however, is not to affect the security, chargeability, or repayment of any moneys borrowed before the date above-mentioned.

But it shall be the duty of the Highway Board, in case of any one parish paying more than its share of such borrowed money, or of the interest thereon, to make good to that parish the excess so paid out of the rates of the other parishes liable to contribute thereto.

The justices may from time to time make general orders in relation to the mode in which applications are to be made to them for their consent under this Act to the borrowing of any moneys. (m)

(m) In reply to an inquiry by a Highway Board whether they were empowered to erect a culvert, and charge the costs of erection to the parish in which it was to be erected, as ordinary expenses could then be charged, or whether they were compelled under s. 47 of the Highway Act, 1864, to borrow the money, Secretary Sir George Grey, stated that assuming the culvert to be such a work as the parish might itself execute if it were not within a highway district, and assuming that no moneys were borrowed for the purpose of constructing the culvert, the Board might make the culvert without acting under the provision of the 47th section of the Act. It was added that the Board would do well to obtain the assent of the vestry of the parish, though Sir George Grey did not think that assent legally necessary.—40 *Law Times*, p. 442.

FORM OF APPROVAL OF QUARTER SESSIONS to the borrowing of money under 27 & 28 Vict. c. 101. s. 47.

Whereas Mr. \_\_\_\_\_, as counsel on the part of the Highway Board, having made application for the approval of this court to the borrowing by the said Highway Board of the sum of \_\_\_\_\_ pounds for making certain improvements in the highways of the parish of \_\_\_\_\_ in the said county, as set forth in the following notice:—

“Notice is hereby given, that the Highway Board, having caused an estimate to be made of the expenses of the undermentioned improvements to the undermentioned highways in the parish of \_\_\_\_\_ and within the \_\_\_\_\_ highway district, intend to apply to the justices in quarter sessions assembled for their approval and sanction to borrow the sum of \_\_\_\_\_ pounds sterling for the purposes and in manner following:—

- “1. Conversion of a road, &c. (setting out what is intended).†
- “2. The said sum of \_\_\_\_\_ pounds so proposed to be borrowed, and the interest thereon, is to be paid by the parishes of \_\_\_\_\_, in the county of \_\_\_\_\_, and within the \_\_\_\_\_ highway district, out of the common fund of such district.
- “3. The said sum of \_\_\_\_\_ pounds is to be paid off in \_\_\_\_\_ years from the date of receiving the approval of the justices in quarter sessions assembled for the borrowing of the same by the yearly payment of \_\_\_\_\_ pounds on account and in payment of the said principal sum of \_\_\_\_\_ pounds. The interest on the principal sum from year to year remaining due to be paid annually.
- “4. The application to borrow the above sum of \_\_\_\_\_ pounds for the purposes aforesaid will be made at the \_\_\_\_\_ quarter sessions

in and for the county of \_\_\_\_\_, to be holden at \_\_\_\_\_, on  
the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_.

Dated, &c. \_\_\_\_\_, Clerk to the Highway Board."

Now, having heard the said notice read in open court, and being satisfied that the said application is *bonâ fide* made, and that all the conditions precedent mentioned in the statute in that case provided, and in the standing orders of this court, have been duly complied with, this court doth accordingly approve of the borrowing of the said sum of \_\_\_\_\_ pounds by the said Highway Board for the purposes in the said notice mentioned, the same to be paid off in the manner therein stated.

By the Court, \_\_\_\_\_, Clerk of the Peace.

#### FORM OF CHARGE ON RATES.

This indenture, made, &c., reciting that by an Act, &c. (Highway Act, 1864), it is by the 49th section enacted, &c., that the inhabitants of the parish of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at a vestry meeting duly constituted, resolved, &c., that the Highway Board having satisfied themselves that it is essential that the said improvements should be made, and that they would be improvements coming within the meaning of the said section and the 48th section of the same Act, did at a vestry resolve, &c., and that an application be made to the next court of quarter sessions for the approval, &c., to a sum of \_\_\_\_\_ being borrowed to defray the costs, that at the court of general quarter sessions of the peace, holden at \_\_\_\_\_, in and for the said county, on the \_\_\_\_\_ day of \_\_\_\_\_, application having been made by the said Highway Board in pursuance, &c., for the approval of the justices then and there assembled to the proposal, &c., it was ordered that the before-mentioned proposal, &c., be and was thereby approved by that court, and that \_\_\_\_\_ hath consented to lend, &c., witnesseth that in pursuance of the said agreement, and in consideration of the sum of \_\_\_\_\_ this day paid to the treasurer of the said Highway Board by A. B. of H., the receipt, &c., the said Board doth hereby assign unto the said A. B. his executors, administrators, and assigns, to be a first charge, &c., such proportion of the rates leviable in the said highway parishes of \_\_\_\_\_ under or by virtue of the said Act, as the said sum of \_\_\_\_\_ pounds bears to the whole sum borrowed on the credit of the said rates, to hold the same to the said A. B. his executors, administrators, and assigns, until the said sum of \_\_\_\_\_ with interest at the rate of \_\_\_\_\_ on the said sum, or so much thereof as shall from time to time remain unpaid, be fully paid and satisfied; and it is hereby declared that the interest on the said sum of £ \_\_\_\_\_, or so much thereof as shall from time to time remain unpaid, shall be paid by the said Highway Board and their successors to the said, &c., on the \_\_\_\_\_ day of \_\_\_\_\_ in every year. Also, that the said principal sum of \_\_\_\_\_ shall be repaid to the said, &c., by the said Highway Board and their successors, in twelve equal yearly instalments of £ \_\_\_\_\_ each, the first of such instalments to be paid on the \_\_\_\_\_ next, and the second, and each subsequent instalment on the same day in each subsequent year until the whole sum of \_\_\_\_\_ shall be fully paid and satisfied to the said A. B. his executors, &c. Given, &c.

*Definition of Improvements.*

48. The following works shall be deemed to be improvements of highways: (n)

- (1.) The conversion of any road that has not been stoned into a stoned road.
- (2.) The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges: (o)
- (3.) The doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair. (p)

*Power for Parishes and Districts to contribute to Improvements.*

49. Any parish may, with the consent of its waywarden, contribute to any improvements made in another parish, whether situate or not in the same district, if such first-mentioned parish consider such improvements to be for its benefit; (q) and any Highway Board may contribute to any improvements made in another district if such im-

(n) The highways to be improved must be highways repairable by the parish at large.

(o) County bridges are otherwise provided for. See Glen's "Highway Laws," second edition. See also 33 & 34 Vict. c. 73, s. 12, *post*, as to bridges on roads that were formerly turnpike roads, and 41 & 42 Vict. c. 77, ss. 21, 22, *post*, as to the adoption of bridges, and the payment of contributions towards the erection of bridges, by the county authority.

(p) By 35 & 36 Vict. c. 85, s. 15, *post*, p. 275, the abolition of turnpike tolls by a Highway Board shall be deemed to be an improvement of the highways within the meaning of ss. 47, 48, and 50 of the Highway Act, 1864. See also 36 & 37 Vict. c. 90, ss. 15, 16, *post*, pp. 277, 278, as to the power of Highway Boards to provide for the abolition of tolls on turnpike roads.

(q) It will be proper that the parishioners should, by a resolution in vestry, called after due notice, express their approval of the proposal.

In the case of improvements in parishes in the same district, it will not for the future be necessary to proceed under this section, since the costs of such improvements will, after the 25th of March, 1879, be charged on the district fund.

provements are, in the opinion of the Highway Board of the first-mentioned district, for the benefit of their district. The contribution to be made by one parish to another shall be payable in the same manner as if such contributions were due from the contributing parish in respect of expenses incurred in keeping in repair the highways of that parish, (r) and moneys contributed by one district to another district shall be payable out of the common fund of the contributing district.

*Certain Clauses of 10 & 11 Vict. c. 16, incorporated.*

50. The clauses of "The Commissioners' Clauses Act, 1847," with respect to mortgages to be created by the Commissioners, shall form part of and be incorporated with this Act, (s) and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

In the construction of the said clauses, "the Commissioners" shall mean "the Highway Board."

Mortgages and transfers of mortgages shall be valid if made in the forms prescribed by the last-mentioned Act, or in the forms appearing in the second schedule annexed to this Act, or as near thereto as circumstances admit.

*As to Encroachment on Highways.*

51. From and after the passing of this Act if any person shall encroach by making or causing to be made any building, or pit, or hedge, ditch, or other fence, or by placing any dung, compost, or other materials for dressing land, or any rubbish, on the side or sides of any carriageway or cartway within fifteen feet of the centre thereof, (t) or by

(r) See s. 32, and notes, *ante*.

(s) See ss. 75-88 of the Commissioners' Clauses Act, 1847, in the Appendix, *post*, pp. 287-293.

(t) With regard to encroachments on disturnpiked roads. see 28 & 29 Vict. c. 107, s. 2, and note, *post*, p. 260.

Where a fence was erected upon the site of an open and unenclosed ditch, the property of the person erecting the fence, but which fence was within fifteen feet of the centre of the highway, it was held that there was no encroachment within the meaning of s. 51 of the 27 & 28 Vict. c. 101.—*Field v. Thorne*, 20 L. T. (N. S.) 563.

If an encroachment be made upon a highway by erecting a fence

removing any soil or turf from the side or sides of any carriageway or cartway, except for the purpose of improving the road, and by order of the Highway Board, or, where there is no Highway Board, of the surveyor, he shall be subject on conviction for every such offence to any sum not exceeding forty shillings, notwithstanding that the whole space of fifteen feet from the centre of such carriageway or cartway has not been maintained with stones or other materials used in forming highways; and it shall be lawful for the justices assembled at petty sessions, upon proof to them made upon oath, to levy the expenses of taking down such building, hedge or fence, (u) or filling up such ditch or pit, and removing such dung, compost, materials, or rubbish as aforesaid, or restoring the injury caused by the removal of such soil or turf, upon the person offending: Provided always, that where any carriageway or cartway is fenced on both sides no encroachment as aforesaid shall be allowed whereby such carriageway or cartway shall be reduced in width to less than thirty feet between the fences on each side. (v)

within fifteen feet from the centre thereof, the penalty must be proceeded for under 27 & 28 Vict. c. 101, s. 51, within six months after the erection of the fence, according to 11 & 12 Vict. c. 43, s. 11; and the offence is not a continuing offence.—*Ranking v. Forbes*, 34 J. P. 486; followed in *Coggins v. Bennett*, L. R. 2 C. P. D. 568.

The 51st section of 27 & 28 Vict. c. 101, only applies to persons who have committed the alleged encroachment upon the carriageway or cartway, or upon that part at the side which has been dedicated to the public. It does not relate to any ground which is not part of a highway; and the words, "the sides of any carriageway or cartway," mean any land forming part of the highway.—*Easton v. Richmond*, 25 L. T. (N. S.) 586, 41 L. J. M. C. 25, L. R. 7 Q. B. 69.

It may here be mentioned that in the case of *Walker v. Horner* (L. R. 1 Q. B. D. 4), the question arose whether the omission to lop trees hanging over an alleged highway was a wilful obstruction within the meaning of s. 72 of the Highway Act, 1835, 5 & 6 Wm. IV., c. 50, and it was held by Mellor and Quain, JJ. (Cockburn, C.J. diss.) that the section by wilful obstruction meant positive obstruction, such as posts laid across the path, or fireworks let off on the path, and not a mere omission to lop overhanging branches, for which a remedy lay by indictment.

(u) The building, &c., cannot be forcibly taken down without a previous summons to the offender, so that he may have an opportunity of being heard.—See *Cooper v. Wandsworth*, 8 L. T. (N. S.) 278, 14 C. B. (N. S.) 180, 9 Jur. (N. S.) 1155, 32 L. J. M. C. 185.

(v) With reference to the subject of this section, see also s. 69 of 5 & 6 Wm. IV. c. 50, in Glen's "Highway Laws," second edition.

*Power to contract for Materials for repairing Highways.*

52. The Highway Board may and is hereby authorized to contract (*w*) for purchasing, getting, and carrying the materials required for the repair of the highways, and for maintaining and keeping in repair all or any part of the highways of any parish within their highway district, for any period not exceeding three years. (*x*)

(*w*) As to stamp duty on such contracts, see *ante*, p. 140.

As to this clause, see also 33 & 34 Vict. c. 73, s. 11, with reference to a turnpike road thrown upon a highway district.

(*x*) The following case arose out of the Act of 1862:—In December, 1865, the defendants (the K. Highway Board) having jurisdiction under the Highway Act, 1862 (25 & 26 Vict. c. 61) over a district comprising, amongst other parishes, the parish of W., advertised for tenders for the supply of materials for repairing the roads in W. in 1866, in answer to which the plaintiff sent in a tender, which was accepted, whereupon a contract for such supply was entered into by him with the defendants. In January, 1866, the defendants approved their surveyor's estimate of the approximate amount of expenditure for the several parishes, and by their direction a call of £768 was made upon the parish of W., one moiety of which the parish paid in February, 1866, the other moiety, after a dispute as to the liability, being paid by them in 1867.

On the 24th March, 1866, the parish of W. passed a resolution, under sec. 41 of the Highway Act, 1862, adopting the Local Government Act, 1858; and the statutory requirements having been complied with, a notice signed by the Home Secretary appeared in the *London Gazette* on the 11th May, 1866, that at the expiration of two months from the passing of such resolution the said Act of 1858 would have the force of law within the parish of W. On the 26th July, 1866, the defendant received notice from the Local Board of the adoption by the latter parish of the Local Government Act, 1858.

Up to that date (26th July, 1866) the defendants continued to repair the W. roads with materials supplied by the plaintiff to their surveyor's order, just as if W. had not adopted or intended to adopt the Local Government Act, 1858, and without being requested by the W. Local Board to do such repairs. The amount of materials supplied by the plaintiff for 1866 exceeded the amount contemplated by the estimate and contract at the beginning of the year; but there was nothing unusual in that fact, inasmuch as for the previous years—1864, 1865—the plaintiff, under contracts similar to the present one had supplied and been paid by the defendants for materials so supplied by him, in excess of the amounts estimated for those years.

In an action for goods sold and delivered, &c., the plaintiff sought to recover the price of the materials so supplied by him from the 1st January to 26th July, 1866, which he contended the defendants

8 & 9 Vict c. 18, and 23 & 24 Vict c. 106, incorporated.

53. A Highway Board for the purpose of improving the highways within their district may purchase such lands

were liable to pay, inasmuch as he had no notice of W. ceasing to be a member of the K. highway district, or that he was to discontinue supplying the materials; but, on the contrary, he continued to supply to order through the surveyor of the defendants materials which the defendants used; but, in any event, they were liable to pay him up to the 24th May, until which date the plaintiff alleged the parish of W. continued to be a member of the K. Highway Board. The defendants denied their liability, on the ground that by adopting the Local Government Act, 1858, on the 24th March, W. thenceforth ceased to form part of the K. highway district, and the defendants had no longer any power to repair roads in that parish, or to make calls on W. in order to pay the plaintiff; and that the plaintiff could not recover from the defendants for any portion of the materials supplied for W. subsequently to the 24th March.

Upon a special case, stating all the above facts, it was—

Held by the Court of Exchequer (Martin and Bramwell, BB.) that the plaintiff was entitled to recover from the defendants the whole amount of his claim, and that the defendants had not, in repairing the roads in W. between the 24th March and the 24th May, or between the 24th May and the 26th July, acted *ultra vires*, so as to prevent the plaintiff from recovering the price of the materials so supplied by him during either of those periods.

*Per Martin, B.*—It is a question of fact; and on the facts stated the court should find a verdict for the amount claimed as for goods *bonâ fide* supplied to the order of a person authorized by the defendants to give it, and used for their purposes.

*Per Bramwell, B.*—The words “upon such adoption being made,” in section 41 of the Highway Act, 1862, must mean “upon such adoption coming into operation;” and therefore the resolution of the parish of W., on the 24th March, to adopt the Local Government Act, 1858, did not amount to an adoption of it, nor did the parish “cease to form part of the K. highway district” within that section until the expiration of two months from such date; and although on such adoption the parish ceased to form part of the district, yet it is by sec. 41 to be “subject to the payment of any contribution due from the parish to the Board at the time of such adoption.” The defendants, therefore, were bound to repair the W. roads, if not to the end of the year, at least to the extent of the funds they had received for that purpose.

*Quære.*—Whether, if fresh funds had been necessary for the repairs after the 28th May, the Board would, under the circumstances, have had power to raise them in the way prescribed by sec. 21 of the Highway Act, 1862.—*Driver v. Kingston Highway Board*, 24 L. T. (N. S.) 480.

A Highway Board may make and enforce a contract to allow a



or easements relating to lands as they may require; (y) and "The Lands Clauses Consolidation Act, 1845," and the Act amending the same passed in the Session of the twenty-third and twenty-fourth years of the Reign of Her present Majesty, chapter one hundred and six, shall be incorporated with this Act, with the exception of the clauses relating to the purchase of land otherwise than by agreement. (z)

In the construction of this Act and the said incorporated Acts this Act shall be deemed to be the Special Act, and the Board shall be deemed to be the promoters of the undertaking, and the word "land" or "lands" shall include any easement in or out of lands.

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gas company to open a highway on making a certain payment to the Board, see *Edgware Highway Board v. Harrow District Gas Co.*, ante, p. 99.

(y) By 25 & 26 Vict. c. 61. s. 9, subsection 2, Highway Boards may acquire and hold lands for the purposes of the Highway Acts without licence in mortmain.

(z) The provisions of these Acts are too voluminous to be conveniently included in this work. They will be found *in extenso*, together with the decisions of the Courts on the various sections, in Glen's "Law of Railways."

## FIRST SCHEDULE.

## PROCEEDINGS OF HIGHWAY BOARDS.

- (1.) The Board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the Board, as they think fit, subject to the following conditions:—
  - (a.) The first meeting after the formation of the district shall be held at the time and place fixed by the order of the justices in that behalf; (a)
  - (b.) One ordinary meeting shall be held in each period of four months, and of such meetings one shall be held on some day between the seventh and fourteenth days of April; (b)
  - (c.) An extraordinary meeting may be summoned at any time, on the requisition of three members of the Board, addressed to the Clerk of the Board;

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(a) See 27 & 28 Vict. c. 101, s. 10, *ante*, and note to 25 & 26 Vict. c. 61, s. 15, as to the board-room of the Highway Board. By 26 Vict. c. 17, s. 6, re-enacted in the fifth schedule to the Public Health Act, 1875, 38 & 39 Vict. c. 55, "where any local government district or any other place is surrounded by or adjoins a highway district constituted under the Highway Acts, such first-mentioned district or other place shall, for the purpose of any meeting of the Highway Board, be deemed to be within such highway district."

Where the justices by their final order fixed the first day of meeting of the Highway Board for the Thursday after the 25th March, and no day was specially named for the election of waywardens, and, according to the custom of the parishes in the district, it had been usual to elect highway surveyors on the 25th March, or within two or three days thereafter, it was held that the order was not bad because it did not provide for fourteen days elapsing after the 25th March, but provided only for five clear days, though it would have been better to give more time.—*Reg. v. Lindsey, JJ.*, 6 B. & S. 892, 12 Jur. (N. S.) 314, 35 L. J. M. C. 90, 13 L. T. (N. S.) 524.

(b) The meeting is to be held *between* these days; both, therefore, must be excluded.

- (d.) The quorum to be fixed by the Board shall consist of not less than three members ;
- (e.) Every question shall be decided by a majority of votes of the members voting on that question ;
- (f.) The names of the members present at a meeting shall be recorded.
- (2.) The Board shall at the first meeting, and afterwards from time to time at their first meeting after each annual appointment of members of the Board as hereafter mentioned, appoint one of their members to be chairman, and one other of their members to be a vice-chairman for the year following such choice.
- (3.) If any casual vacancy occur in the office of chairman or vice-chairman, the Board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some member of their number to fill such vacancy ; and every such chairman or vice-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.
- (4.) If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting ; and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be a chairman of such meeting.
- (5.) In case of an equality of votes at any meeting the chairman for the time being of such meeting shall have a second or casting vote. (c)
- (6.) All orders of the Board for payment of money, and all precepts issued by the Board, shall be deemed to be duly executed if signed by two or more members of the Board authorized to sign them by a resolution of the Board, (d) and countersigned by the clerk ; but it shall

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(c) The chairman, if he intends to vote on the question before the Board, should give his vote immediately after he has counted the votes of the other members present, and before he declares from the chair the numbers voting on each side of the question. If, after counting them, he finds that the votes are equal, he should give a second or casting vote.

(d) The most convenient course will be for the Board, at their first

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not be necessary, in any legal proceeding to prove that the members signing any such order or precept were authorized to sign them, and such authority shall be presumed until the contrary is proved.

## SECOND SCHEDULE.

### FORMS.

#### *Form of Mortgage. (e)*

The Highway Board of the                      district, in consideration of                      pounds paid to the treasurer of the said Board by A. B. of                      , assigns unto the said A. B., his executors, administrators, and assigns, such proportion of the highway rates leviable in the highway parish or parishes of [*name the parishes*] (f) as the said sum of                      pounds bears to the whole sum borrowed on the credit of the said rates, to hold to the said A. B., his executors, administrators, and assigns, until the said sum of                      pounds, with interest at the rate of                      pounds per centum per annum, is paid.

The interest on this mortgage will be paid at                      day and                      on the                      days of                      in every year.

The principal will be paid at                      day of                      on the                      day of                     

Given under our Corporate Seal (g) this                      day of                      18                      .

annual meeting after their election, to pass a resolution nominating the members of the Board who are to sign orders for payment of money during the year, instead of doing so at each meeting.

(e) See section 50 of the Act, *ante*, p. 171.

(f) All moneys borrowed after the 25th March, 1879, are, by 41 & 42 Vict. c. 77, s. 8 (*post*, p. 189) to be charged on the district fund, and therefore, in the case of loans subsequent to that date, a portion of the common fund or of the highway rates leviable in every parish within the district will be assigned to the mortgagee.

(g) The mortgage must be under the Corporate Seal of the Board, and duly stamped. See Commissioners' Clauses Act, 10 Vict. c. 16, s. 75, *post*, p. 287.

"Highway rate," includes poor rate, when the highways are main-

*Transfer of Mortgage by Indorsement.*

The within-named *A. B.*, in consideration of the sum of \_\_\_\_\_ pounds paid to him by *C. D.* of \_\_\_\_\_, hereby transfers to the said *C. D.*, his executors, administrators, and assigns, all his interest in the moneys secured by the within-written mortgage and in the within-named rates.

In witness whereof the said *A. B.* has hereunto set his hand and seal (*h*) this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

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tained out of the poor rate. See s. 33 of Act, *ante*, p. 151. "Highway parish" means every parish that separately returns a waywarden or waywardens to the Highway Board. See s. 3 of Act, *ante*, p. 127.

(*h*) The transfer must be under Seal and duly stamped. See section 77 of Commissioners' Clauses Act, 10 Vict. c. 16, *post*, p. 288.

## THE HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878.

41 & 42 VICT. c. 77.

AN ACT TO AMEND THE LAW RELATING TO HIGHWAYS IN  
ENGLAND AND THE ACTS RELATING TO LOCOMOTIVES ON  
ROADS; AND FOR OTHER PURPOSES.

[16TH AUGUST 1878.]

WHEREAS it is expedient to amend the law relating to  
highways in England, and to amend the Locomotive Acts,  
1861 and 1865 :

Be it enacted by the Queen's most Excellent Majesty, by  
and with the advice and consent of the Lords Spiritual  
and Temporal, and Commons, in this present Parliament  
assembled, and by the authority of the same, as follows :—

### PRELIMINARY.

#### *Short Title..*

1. This Act may be cited as the Highways and Loco-  
motives (Amendment) Act, 1878. (a)

#### *Application of Act.*

2. This Act shall not apply to Scotland or Ireland ; and,  
save as is by this Act expressly provided, Part I. of this Act  
shall not apply to the Isle of Wight ; nor to any part of the  
metropolis ; nor to any part of a county to which the Act

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(a) This Act is also included under the short title of "The Highway  
Acts," see 27 & 28 Vict. c. 101, s. 1. (*ante*, p. 127), by which that title  
includes the Highway Acts of 1835, 1862, and 1864, and any Acts  
passed or to be passed amending the same.

passed in the session of the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter sixty-eight, intituled "An Act for the better Management and Control of the Highways in South Wales," extends. (b)

## PART I.

### AMENDMENT OF HIGHWAY LAW.

#### HIGHWAY DISTRICTS.

*Highway districts to be made so far as possible coincident with rural sanitary districts.*

3. In forming any highway districts, or in altering the boundaries of any highway districts, the county authority (c) shall have regard to the boundaries of the rural sanitary districts in their county, and shall, so far as may be found practicable, form highway districts so as to be coincident in area with rural sanitary districts, or wholly contained within rural sanitary districts. (d)

(b) The Local Act 53 Geo. III., c. xcii., provides for repairing the roads and highways in the Isle of Wight. Section 7 of the Highway Act, 1862 (*ante*, p. 85), prohibits the inclusion in any highway district, formed in pursuance of that Act of (amongst other places) the Isle of Wight, the Metropolis, and the parts of South Wales above-mentioned. Section 27 of the present Act is the only clause of Part I. which applies to the Isle of Wight and South Wales.

The South Wales Highway Act, 23 & 24 Vict. c. 68, applies to the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan.

(c) That is, the justices of the county in general or quarter sessions assembled, see s. 38, *post*.

(d) As to the formation of highway districts, see 25 & 26 Vict. c. 61, ss. 5 & 6, *ante*, pp. 80, 82; and as to their alteration, see s. 39 of the same Act, p. 116.

The object of the above section and the two following sections is explained by the Local Government Board, in their circular letter of the 18th September, 1878, addressed to the Clerks of the Peace of counties, as follows :—

"The powers which, previously to the passing of the Act, were vested in the justices of the county with respect to the formation, alteration, and dissolution of highway districts remains unaltered, subject to the modifications herein-after explained.

*Power for rural sanitary authority of district coincident with highway district to become Highway Board.*

4. Where a highway district, whether formed before or after the passing of this Act, is or becomes coincident in area with a rural sanitary district, the rural sanitary authority of such district may apply to the county autho-

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"In the first place it will be observed, that, in forming new highway districts, or in altering the boundaries of existing ones, the county authority, who are defined to be the justices of a county in general or quarter sessions assembled (see s. 38, *post*, p. 220), are required to have regard to the boundaries of the rural sanitary districts in their county, and, so far as practicable, to form highway districts so as to be coincident in area with rural sanitary districts or wholly contained within those districts.

"In order to understand the intention of this direction recourse must be had to the succeeding section of the Act, which provides that where a highway district is or becomes coincident in area with a rural sanitary district, the rural sanitary authority may apply to the county authority, stating that they are desirous to exercise the powers of a Highway Board under the Highway Acts within their districts; and on such application the county authority may, by order, declare that from and after a day to be named in the order such rural sanitary authority shall exercise all the powers of a Highway Board; and as from the commencement of the order the existing Highway Board (if any) for the district shall be dissolved.

"In requiring, therefore, that in future highway districts shall, as far as practicable, be made coincident with rural sanitary districts, it is evident that the legislature not only intended to guard against the confusion occasioned by the further overlapping of highway districts with rural sanitary areas, but at the same time to encourage the transfer to the rural sanitary authorities of the management of the highways within their respective districts, or at least to remove obstacles in the way of such transfer where circumstances point to it as tending to economical and efficient administration.

"At the present time the duty devolves upon the rural sanitary authorities of providing works of sewage and water supply for the areas under their jurisdiction, and as these works necessitate constant and serious interference with the public roads it is obviously desirable, looking at the advantages experienced in urban districts from having all matters affecting the roads under the direction of one body, that there should be means readily available for placing the highways in rural districts also under the control and management of the sanitary authority.

"In corroboration of this view reference may be made to the report of the Select Committee appointed by the House of Commons during the last session to inquire into the system under which guardians of the poor and members of local boards are elected, in which the Committee distinctly recommend that wherever practicable the powers



rity, stating that they are desirous to exercise the powers of a Highway Board under the Highway Acts within their district. (e)

On such application the county authority may, if they see fit, by order declare that from and after a day to be named in the order (in this Act called the commencement of the order) such rural sanitary authority shall exercise all the powers of a Highway Board under the Highway

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of Highway Boards in rural sanitary districts shall be transferred to the rural sanitary authority.

"Having regard, therefore, to the circumstances referred to, the Justices will no doubt deem the present a convenient opportunity for examining the areas comprised in existing highway districts with a view to their modification wherever such a course may appear to be advantageous, and for reconsidering the question of the formation of such districts in those counties where the system of Highway Boards has not hitherto been adopted, or has been resorted to in part of the county only. Moreover, the sections already referred to under which rural sanitary authorities may be clothed with the functions of Highway Boards may furnish an inducement to place the roads under district management in those parts of the country where the system has not hitherto found favour."

(e) See the note to the preceding section.

It will be noticed that there must be a *highway district* in existence at the time when the rural sanitary authority make application to the county authority (*i.e.*, the justices at general or quarter sessions) for authority to exercise the powers of a Highway Board; and though the next paragraph of the section contemplates the possibility that there may not be a *Highway Board* in existence when the order of the county authority comes into force, yet a highway district, by s. 10 of the Highway Act, 1864, is not deemed to be formed until the day appointed by the provisional or final order of justices for the first meeting of the Highway Board; and therefore if a rural sanitary authority, whose district is not coincident with a highway district, are desirous of becoming the Highway Board for the rural sanitary district, they must first procure the formation of a highway district which will be coincident with their own district, in the manner provided by ss. 5 and 6 of the Highway Act, 1862, *ante*, or, if the whole or part of their district is already within a highway district, in the manner provided by s. 39 of the same Act, and then on or after the day appointed for the first meeting of the Highway Board for the new district they may make their application under the above section.

The words "(if any)" in the second paragraph, and also the provision for the transfer of property, &c., from the surveyor or surveyors to the rural sanitary authority, in section 5, doubtless have reference to the possibility that waywardens may not be elected, or that the Highway Board may not meet on the day appointed by the order which formed the highway district.

Acts; and as from the commencement of the order the existing Highway Board (if any) for the district shall be dissolved, and waywardens or surveyors shall not hold office or be elected for any parish in the district.

An order made under this section may be amended, altered, or rescinded by a subsequent order of the county authority.

Where a highway district, being coincident in area with a rural sanitary district, is situate in more than one county, an order under this section may be made by the county authority of any county in which any part of such district is situate, but such order, and any order amending, altering, or rescinding the same, shall not be of any force or effect until it has been approved by the county authority or authorities of the other county or counties in which any part of such district is situate.

*Consequences of rural sanitary authority becoming Highway Board.*

5. (1.) From and after the commencement of the order declaring a rural sanitary authority entitled to exercise the powers of a Highway Board within their district, the following consequences shall ensue:—

All such property, real or personal, including all interests, easements, and rights in to and out of property real and personal and including things in action, as belongs to or is vested in or would but for such order have belonged to or been vested in the Highway Board, or any surveyor or surveyors of any parish forming part of the district, (f) shall pass to and vest in the rural sanitary authority for all the estate and interest of the Highway Board, or of such surveyor or surveyors, but subject to all debts and liabilities affecting the same:

All debts and liabilities incurred in respect of any property transferred to the rural sanitary authority may

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(f) A similar transfer of property, &c., from the surveyor or surveyors to the Highway Board takes place, under 25 & 26 Vict. c. 61, s. 11, *ante*, at and after the first meeting of such Board when a highway district has been formed. See also the last part of the note to the preceding section.

be enforced against that authority to the extent of the property transferred :

All such powers rights duties liabilities capacities and incapacities (except the power of obtaining payment of their expenses by the issue of precepts in manner provided by the Highway Acts, or the power of making, assessing, and levying highway rates) (g) as are vested in or attached to or would but for such order have become vested in or attached to the Highway Board, or any surveyor or surveyors of any parish forming part of the district, shall vest in and attach to the rural sanitary authority :

All property by this Act transferred to the rural sanitary authority shall be held by them on trust for the several parishes for the benefit of which it was held previously to such transfer. (h)

(2.) If at any time after a rural sanitary authority has become invested with the powers of a Highway Board in pursuance of this Act, the boundaries of the district of such authority are altered, the powers and jurisdiction of such authority in their capacity of Highway Board shall be exercised within such altered district ; and on the application of any authority or person interested the Local Government Board may by order provide for the adjustment of any accounts, or the settlement of any doubt or difference so far as relates to highways consequent on the alteration of the boundaries of such rural sanitary district.

(3.) All expenses incurred by a rural sanitary authority in the performance of their duties as a Highway Board shall be deemed to be general expenses of such authority within the meaning of the Public Health Act, 1875. (i)

(g) See subs. 3, and note, *infra*, as to the mode in which funds are to be provided for payment of the expenses of the rural sanitary authority.

(h) See the last clause of 25 & 26 Vict. c. 61, s. 11, and note thereon, *ante*, p. 95.

(i) The following are the provisions of the Public Health Act, 1875, 38 & 39 Vict. c. 55, with respect to the general expenses of rural sanitary authorities :—

“Sec. 229. The expenses incurred by a rural authority in the execution of this Act shall be divided into general expenses and special expenses. General expenses (other than those chargeable on owners and occupiers under this Act) shall be the expenses of the establishment and officers

*Highway Boards may combine to appoint a District Surveyor.*

6. Any two or more Highway Boards may unite in appointing and paying the salary of a district surveyor, who shall in relation to the district of each of the Boards

of the rural authority, the expenses in relation to disinfection, the providing conveyance for infected persons, and all other expenses not determined by this Act, or by order of the Local Government Board to be special expenses. . . .

"General expenses shall be payable out of a common fund to be raised out of the poor rate of the parishes in the district according to the rateable value of each contributory place in manner in this Act mentioned. . . .

"The following areas situated in a rural district shall be contributory places for the purposes of this Act; that is to say: (1) Every parish not having any part of its area within the limits of a special drainage district formed in pursuance of the Sanitary Acts or of this Act, or of an urban district; and (2) Every such special drainage district as aforesaid; and (3) In the case of a parish wholly situated in a rural district, and part of which forms or is part of any such special drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district; and (4) In the case of a parish a part of which is situated within an urban district, such portion of that parish as is not comprised within such urban district, or within any such special drainage district as aforesaid.

"Sec. 230. For the purpose of obtaining payment from the several contributory places within their district of the sums to be contributed by them, the rural authority shall issue their precept to the overseers of each such contributory place requiring such overseers to pay, within a time limited by the precept, the amount specified in such precept to the rural authority or to some person appointed by them, care being taken to issue separate precepts in respect of contributions for general expenses and special expenses, or to make such expenses respectively separate items in any precept including both classes of expenses. Where a contributory place is part of a parish, as defined by this Act, the overseers of such parish shall for the purposes of this Act be deemed to be the overseers of such contributory place, and, where any part of a contributory place is part of a parish, the overseers of such parish shall for the like purposes be deemed to be the overseers of such part of such contributory place.

"The overseers shall comply with the requisitions of such precept by paying the contribution required in respect of general expenses out of the poor rate of their respective parishes. . . .

"Where a contribution for general expenses is required from a contributory place or part of a contributory place which is part of a parish, the overseers shall from time to time levy such increase of rate from the contributory place or such part thereof as may be sufficient to recoup the parish for the sum it has paid on account of the contributory place or such part thereof in respect of general expenses under

by whom he is appointed have all the powers and duties of a district surveyor under the Highway Acts. (j)

*Expenses of Highway Boards to be paid out of District Fund.*

7. All expenses incurred by any Highway Board in maintaining and keeping in repair the highways of each parish within their district, and all other expenses legally incurred by such Board(k), shall, notwithstanding anything

this Act, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor rate, or by a separate rate to be assessed, made, allowed, published, collected, and levied in the same manner as a poor rate. The officers ordinarily employed in the collection of the poor rate, shall, if required by the overseers, collect any separate rate made under this section, and receive out of such separate rate such remuneration for the additional duty as the overseers with the consent of the vestry may determine.

"The overseers shall at the expiration of their term of office pay any surplus in their hands arising from any separate rate levied in pursuance of this Act, above the amount for which the rate was made, to the rural authority or to such person as they may appoint, to the credit of the contributory place within which or within part of which such rate was made, and such surplus shall go in reduction of the next call that may be made on such contributory place or such part thereof for the purpose of defraying the expenses incurred by the rural authority.

"Sec. 231. If the amount required by any precept of a rural authority to be paid by the overseers of any parish is not paid in manner directed by such precept, and within the time therein specified for that purpose, the rural authority shall have the like remedy for recovery from the overseers of such amount as is not paid as guardians have for the time being for recovery from overseers of contributions of parishes, and for that purpose the precept requiring the payment shall be conclusive evidence of the amount thereof." As to the recovery of contributions by guardians, see 2 & 3 Vict. c. 84, s. 1, 12 & 13 Vict. c. 103, s. 7, 14 & 15 Vict. c. 105, s. 9.

(j) See 25 & 26 Vict. c. 61, ss. 12, 16, as to the appointment and duties of the district surveyor.

With reference to the foregoing provisions, see *Reg. v. Heath*, ante, pp. 153, 154.

(k) A township was included in a highway district, and a person having caused an obstruction on a highway, the Highway Board, at the instance of the waywarden of the parish, indicted him for it, and he removed the indictment by *certiorari*. Upon the trial, the person causing the obstruction was found guilty, and subsequently paid the taxed costs of the indictment. There was, however, a sum of £60 extra costs upon the indictment, which the Highway Board charged against the township; and it was held that the costs of the indictment were such costs as the Highway Board were justified, under the 25 & 26 Vict. c. 61, s. 20, in incurring to remove an obstruction to the highway,

contained in the Highway Acts, on and after the twenty-fifth day of March one thousand eight hundred and seventy-nine be deemed to have been incurred for the common use or benefit of the several parishes within their district, and shall be charged on the district fund: (l) Provided, that if a Highway Board think it just, by reason of natural differences of soil or locality, or other exceptional circumstances, that any parish or parishes within their district should bear the expenses of maintaining its or their own highways, they may (with the approval of the county authority or authorities (m) of the county or counties within which their district, or any part thereof, is situate) divide their district into two or more parts, and charge exclusively on each of such parts the expenses payable by such Highway Board in respect of maintaining and keeping in repair the highways situate in each such part; so, nevertheless, that each such part shall consist of one or more highway parish or highway parishes. (n)

and that they were properly chargeable against the township under that section.—*Reg. v. Heath*, 12 L. T. (N. S.) 492, 6 B. & S. 578.

A Highway Board have no power to incur expenses in opposing a Bill in Parliament, even though such Bill should affect some of the parishes in the district, and the opposition should be successful. In the particular case the Highway Board opposed in Parliament a Bill promoted by the trustees of a turnpike road, which ran through fifteen out of the twenty-one parishes of which the district was composed; and the quarter sessions found that such opposition was *bonâ fide*, and the result beneficial to the district. The Board apportioned the expenses of the opposition among the several parishes in the district; but on a case stated the court held that they had no lawful authority to incur the expenses.—*Reg. v. Kingsbridge Highway Board*, 18 L. T. (N. S.) 554, 32 J. P. 372.

(l) Until the day here mentioned only the salaries of officers, and other expenses incurred by the Board for the common use and benefit of the several parishes within their district, will be charged to the district fund, the expenses of maintenance of highways and other expenses being a separate charge on each parish; see 27 & 28 Vict. c. 101, s. 32; but after that day all expenses legally incurred by the Board, whether for the common use or benefit of all the parishes or not, will be payable out of the district fund, and will consequently be borne by the several parishes in proportion to their respective rateable values, except in cases where the Highway Board act upon the proviso to the present section.

(m) That is the justices in general or quarter sessions assembled, see s. 38, *post*.

(n) A "highway parish" in this Act means "a parish or place

*Charge of Moneys to be hereafter borrowed.*

8. All moneys borrowed by a Highway Board after the twenty-fifth day of March one thousand eight hundred and seventy-nine, under the Highway Acts, shall be charged on the district fund, but nothing in this Act shall affect the security, chargeability, or repayment of any moneys borrowed before the twenty-fifth day of March one thousand eight hundred and seventy-nine. (o)

*Audit of Accounts of Highway Districts and Parishes.*

9. The accounts of the highway authority of every highway district and highway parish shall be made up in such form as the Local Government Board shall from time to time prescribe, and shall be balanced to the twenty-fifth day of March in each year, and as soon as conveniently may be after such day the said accounts shall be audited and examined by the auditor of accounts relating to the relief of the poor for the audit district in which the highway district or highway parish, or the greater part thereof in rateable value, is situate. (p)

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included or capable of being included in a highway district, in pursuance of the Highway Acts, 1862 and 1864, or one of such Acts," see s. 38, and note, *post*.

(o) By 27 & 28 Vict. c. 101, s. 47, which authorizes Highway Boards to borrow money with the approval of the county authority, the money borrowed was to be a first charge on the highway rates of the parish or parishes in respect of which it was borrowed; but after the 25th March, 1879, any moneys which may be borrowed will be charged on the whole district in the same manner as all other expenses legally incurred by the Board are to be charged under section 7, above.

(p) The auditor of accounts relating to the relief of the poor is now appointed by the Local Government Board, under 31 & 32 Vict. c. 122, s. 24; and that Board may, if necessary, appoint a temporary deputy to act as auditor, under 11 & 12 Vict. c. 91, s. 10, or 12 & 13 Vict. c. 103, s. 8.

By 7 & 8 Vict. c. 101, s. 33, the auditor "shall give or send by post or otherwise to the said overseers or other officers (i.e., in the present case, to the highway authority) fourteen days' notice of the said audit;" and by 11 & 12 Vict. c. 91, s. 7, in addition to the notices now required by law to be given by the auditor, he shall give notice by advertisement in some newspaper circulating in the county wherein the union or the greater part of it, or, in the case of a parish not comprised in a union,

Every such auditor shall (as nearly as may be) have, in relation to the accounts of the highway authority of a highway district or highway parish, and of their officers, the same powers and duties as he has in the case of accounts relating to the relief of the poor; (g) and any person

wherein such parish shall be situated, a reasonable time prior to the holding of his audit; and the production of a copy of such newspaper shall in all courts and for all purposes be deemed sufficient evidence of the notice of the audit; and, except where a party, not being an officer bound to account to the auditor, shall be surcharged by such auditor, it shall not be necessary to prove that the audit of any accounts was adjourned, and that notice of any such adjourned audit was given."

(g) The following are the powers and duties of the district auditors in the case of accounts relating to the relief of the poor:—

By 7 & 8 Vict. c. 101, s. 32, "every auditor appointed for such a district shall have full powers to examine, audit, allow, or disallow of accounts, and of items therein, relating to moneys assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other moneys applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him any money, books, deeds, papers, goods or chattels, found by him to be due from any person; and when any such auditor has so certified any money, books, deeds, papers, goods or chattels to be due from any person, he shall forthwith report the same to *the said commissioners* [i.e. now, the Local Government Board].

"... and, if any such money, books, deeds, papers, goods or chattels, be not duly paid or delivered over as hereinbefore directed, the said auditor, or any auditor subsequently appointed, shall proceed, as soon as may be, to enforce the payment or delivering over of the same; and all moneys so certified to be due by such auditor shall be recoverable as so certified from all or any of the persons making or authorizing the illegal payment, or otherwise answerable for such moneys, and shall be recovered on the application of such auditor, or of any such auditor subsequently appointed, or by any person for the time being entitled or authorized to receive the same, in the same manner as penalties and forfeitures may be recovered under the provisions of the said first recited Act" (i.e. under 4 & 5 Wm. IV. c. 76, s. 99, under which penalties and forfeitures may upon summary conviction be levied by distress and sale of the goods and chattels of the offender, or in default of distress by commitment to prison for a period not exceeding three months).

"Where any overseer or officer shall be continuing in office at the time when the accounts are audited, the auditor shall certify as due such sums of money only as shall be disallowed or surcharged by him



aggrieved by the decision of the auditor shall have the

in the accounts so audited; but where the term of office of such overseer or officer shall have expired at the time when the accounts are audited, he shall ascertain the balance which he shall find to be then due on the accounts so audited, together with the sums (if any) which he shall have disallowed or surcharged, and shall give credit for all sums which shall be proved before him to have been paid in respect of such balance to the succeeding overseers or officers, or otherwise lawfully applied on behalf of the parish or union interested therein, before the date of his audit, and he shall certify, report, and recover, in the manner provided by law, the balance remaining due after such credit shall have been given; and every certificate made by any auditor, if made according to the forms in the schedule herunto annexed, or to the like effect, shall be deemed to be sufficient: provided always that where the sum, or the aggregate of the sums, disallowed by the auditor in the account of any officer, shall not amount to forty shillings, the same may be paid over with the balance due from such officer, instead of being paid to the Treasurer." 11 & 12 Vict. c. 91, s. 5.

The following are the forms of certificates given in the Schedule to 11 & 12 Vict. c. 91:

(1.) *Against an accounting Officer.*—"I do hereby certify, that in the account of A. B., the [set out the name of the office] of the parish of ——— [or of the ——— union] I have disallowed [or surcharged] the sum of ——. As witness my hand, this — day of — 18—. M. N., Auditor of the ——— district, which comprises the above-named parish or union":

(2.) *Against a person not an accounting officer.*—"I do hereby certify, that in the accounts of the ——— union [or of the parish of ———] I have disallowed the sum of £— as a payment illegally made out of the funds of such union [or parish] and I find that C. D., of ———, authorized the making of such illegal payment, and I do hereby surcharge the said C. D. with the same. As witness my hand, this — day of — 18—. M. N., Auditor of the ——— district, which comprises the above-named union or parish."

"In any proceedings to be taken by an auditor, or by his attorney (solicitor), before justices, to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of his appointment under the seal of the Poor Law Commissioners (Local Government Board) or of the commissioners aforesaid (viz. the Poor Law Board), and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union or of the parish, as the case may require, within seven days after the same had been so certified, nor within three clear days before the laying of the information, of which non-payment a certificate in writing purporting to be signed by the treasurer, shall be sufficient proof on the part of the auditor; and if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such

last-mentioned certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the auditor twenty-four hours at least prior to the laying of the information." 11 & 12 Vict. c. 91, s. 9.

The limitation, by 11 & 12 Vict. c. 48, s. 11, of the time for making a complaint or laying an information does not apply to proceedings by an auditor to recover certified sums, but "no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or, in the event of an application by way of appeal against the same to the Court of Queen's Bench (Queen's Bench Division of the High Court) or to the Poor Law Board (Local Government Board), after the lapse of nine calendar months from the determination thereupon." 12 & 13 Vict. c. 103, s. 9.

"If any person from whom any such books, deeds, papers, goods and chattels, may be due, neglect or refuse to deliver over the same to the person for the time being entitled or authorized to receive the same, the person so neglecting or refusing shall be liable, on the complaint of any such auditor for the time being, or of the person entitled or authorized to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and deliver over to their successors any sum or sums of money, goods, chattels and other things, in their hands" (as to which, see 17 Geo. II. c. 38, s. 2; 4 & 5 Wm. IV. c. 76, s. 47); 7 & 8 Vict. c. 101, s. 32.

"If an auditor shall see cause to surcharge any person now liable by law to be surcharged by him, and to whom no notice is now required by law to be given, with any sum of money in reference to any payment considered by him to have been illegally or improperly made, he shall, if the person be not present at such audit, cause notice in writing of his intention to make such surcharge to be given, by post or otherwise, to the person against whom he shall propose to make the surcharge, addressed to him at his last known place of abode, and shall adjourn the audit, so far as it shall relate to such particular matter, for a sufficient time to allow of such person appearing before him, and showing cause against such surcharge, and at such time the said auditor shall hear the party, if present, and determine according to the law and justice of the case." 11 & 12 Vict. c. 91, s. 8.

"It shall be lawful for any such auditor to require any person holding or accountable for any money, books, deeds, papers, goods, or chattels, relating to the poor's rate, or the relief of the poor (*i.e.*, for the purposes of the present Acts, the highway rate or the repair of the highways) to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts; and so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor, or to produce to him such accounts or vouchers, or any of them, or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable for every such refusal or neglect to forfeit forty shillings, to be recovered as penalties and forfeitures under the said first-recited Act (*i.e.*, by distress or sale of the goods and chattels of the offender, or in default of distress by commitment for a period not exceeding three months, under 4 & 5 Wm. IV. c. 76,

same rights and remedies as in the case of such last-mentioned audit. (r)

s. 99), or if he wilfully make or sign a false declaration in respect of such accounts, he shall be liable to the penalties of perjury." 7 & 8 Vict. c. 101, s. 33.

"Where any auditor shall lay any information for a penalty in consequence of the default of any officer or other person to attend the audit or the adjournment thereof, or to produce the proper account or vouchers, or to make or sign the proper declaration before him, the costs incurred by such auditor, when not recovered from the defendant in such information, shall, if the Poor Law Board (Local Government Board) consent thereto, be payable to such auditor, and be chargeable in like manner as the costs incurred by an auditor in enforcing the payment of sums certified by him to be due." 12 & 13 Vict. c. 103, s. 11.

"The auditor who shall be authorized to audit the accounts of any guardians, overseers, or officers may at any time when authorized or required by the Poor Law Board (Local Government Board) so to do, inspect the accounts and books of account of any guardian, overseer, or any officer liable to account to him; and any such guardian, overseer, or officer who shall thereupon refuse to allow him to inspect the same, or shall obstruct him in such inspection, or shall conceal any such account or book for the purpose of preventing such inspection, shall forfeit a sum not exceeding five pounds, to be recovered as a penalty under the statute of the 4 & 5 Wm. IV., c. 76, and to be applied to the use of the parish or union for which such guardian, overseer, or officer respectively shall act." 29 & 30 Vict. c. 113, s. 7.

Further with regard to the audit of the accounts relating to the relief of the poor, reference may be made to Archibold's "Poor Law," 13th edition, by Mr. W. C. Glen.

(r) The following are the conditions upon which a writ of *certiorari* shall issue, and the powers of the Court of Queen's Bench and the Local Government Board, with respect to disallowances and surcharges, under the poor-laws:—

"If any person aggrieved by any allowance, disallowance, or surcharge by any such auditor, require such auditor to state the reasons for the said allowance, disallowance, or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made; and it shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorized to receive the same all such money, goods, and chattels as are admitted by his account to be due from him or remaining in his hands, to apply to the Court of Queen's Bench (Queen's Bench Division of the High Court of Justice) for a writ of *certiorari* to remove into the said Court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of

The auditor shall receive such remuneration as the Local Government Board direct; and such remuneration together with the expenses incident to the audit, shall be paid by the highway authority of the highway district or highway parish out of the fund or rate applicable to the

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orders of justices of the peace (see 5 & 6 Will. & M. c. 11; 8 & 9 Wm. III. c. 3; 5 Geo. II. c. 19, ss. 2, 3; 13 Geo. II. c. 18, s. 5; 5 & 6 Wm. IV. c. 33), except that the condition of such recognizance shall be to prosecute such *certiorari*, at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said Court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said Court, and defend the allowance, disallowance, or surcharge so impeached in the said Court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor-rates of the union or parish respectively interested in the decision of the question, unless the said Court make any order to the contrary, and on the removal of such allowance, disallowance, or surcharge, the said Court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such Court that the decision of the said auditor was erroneous, they shall, by rule of the Court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the Court, order the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate as to such Court may seem fit; which rules of Court respectively shall be enforced in like manner as other rules of the said Court are enforceable." 7 & 8 Vict. c. 101, s. 35.

"Provided always that it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance, or surcharge, in lieu of making application to the Court of Queen's Bench (Queen's Bench Division) for a writ of *certiorari*, to apply to the said commissioners (i.e. now, the Local Government Board) to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said Commissioners (the Local Government Board) to issue such order therein, under their [hands and] seal, as they may deem requisite for determining the question." 7 & 8 Vict. c. 101, s. 36.

"Where any appeal shall be made to the said Commissioners (i.e. now, the Local Government Board) against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, it shall be lawful for the said

repair of highways within such district or parish; and such remuneration and expenses may, in default of payment, be recovered in a summary manner.

Section forty-four of the Highway Act, 1835, is hereby repealed (s), and section thirty-six of the Highway Act, 1864, is hereby repealed down to the words, "to be paid out of the district fund," (t) and the statement of receipt and expenditure by the said section directed to be furnished by every Highway Board within thirty days after the signature of the accounts by the chairman (u) shall be

Commissioners (Local Government Board) to decide the same according to the merits of the case; and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may, by writing under the hand of the president of the said Board, and countersigned by a secretary or assistant secretary, direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge." 11 & 12 Vict. c. 91, s. 4, and 29 & 30 Vict. c. 113, s. 5.

"Where an auditor shall have allowed, disallowed, or surcharged a sum in any account rendered to him jointly, and an appeal shall be made against the same, the decision of the auditor may be reversed by the Court or the Local Government Board, as the case may be, and the disallowance or surcharge may be remitted by the said Board in favour of one or more of the persons appealing only without discharging the other person or persons against whom such decision of the auditor was pronounced." 39 & 40 Vict. c. 61, s. 38.

(s) The accounts of surveyors, district surveyors, and assistant surveyors under the Highway Act, 1835, were, by s. 44 of that Act, to be made up for the preceding year and laid before the parishioners in vestry, within fourteen days after the election or appointment of the surveyors under the Act, and within a month after such election or appointment to be laid before the justices at a special sessions for the highways.

(t) The accounts of Highway Boards were, under the Highway Act, 1864, s. 36, to be made up to the 31st of December in each year, and within twenty-eight days thereafter to be examined by the Board and signed by the chairman, and, if the Board thought fit, might be audited by some person appointed by them for the purpose.

(u) The statement here referred to is a statement of receipts and expenditure and of the apportionment of such expenditure on the several parishes, which is to be sent to the members of the Board and to the overseers of the parishes; see 27 & 28 Vict. c. 101, s. 36. *ante*, p. 157.

The accounts of surveyors of highways for highway parishes, will be balanced as heretofore to the 25th of March in each year, but s. 44 of the Highway Act, 1835, being now repealed, they will be audited

furnished within thirty days after the completion of the audit under this section.

Nothing in this section shall affect any proceeding commenced before the passing of this Act.

*Power of County Authority to enforce performance of Duty by defaulting Highway Authority.*

10. Where complaint is made to the county authority that the highway authority of any highway area within their jurisdiction has made default in maintaining or repairing all or any of the highways within their jurisdiction, the county authority, if satisfied after due inquiry and report by their surveyor that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of the duty of the highway authority in the matter of such complaint. (v)

in the same manner as the accounts of boards of guardians, instead of by the justices. Section 45 of the Highway Act, 1835, however, remains in force, and it will therefore still be necessary for the surveyor to verify his accounts and make returns to the justices as to the state of the roads within his parish.

It may here be stated that justices sitting at a special sessions for highways had no power under s. 44 of 5 & 6 Wm. IV. c. 50, to allow charges in the surveyor's accounts which were illegal by reason of the provisions of the 46th section of the same statute.—*Barton v. Piggott*, 44 L. J. M. C. 5.

(v) The following remarks are made upon this provision in the circular letter of the Local Government Board of the 18th Sept., 1878, addressed to the Clerks of the Peace of Counties :—

“ Another important provision in the Act is that which enables the county authority, upon complaint and if satisfied after due inquiry and report by their surveyor that a highway authority within their jurisdiction has made default in repairing any highway, to make an order limiting a time for executing the necessary repairs, and if the order is not complied with to appoint a person to do the works and recover the expenses from the highway authority in default.

“ It will be observed that the power thus conferred is analogous to that in the Public Health Act, 1875, which enables the Local Government Board to appoint a person to execute the duty of a defaulting sanitary authority, and the President cannot but believe that as a general rule this new summary power will, except where the liability to repair is disputed, and special proceedings have to be taken to determine that question, afford a prompt and satisfactory remedy in cases of neglect to repair.

“ The Act does not specify by whom the complaint is to be made in order to set the county authority in motion ; but the justices will probably consider it desirable, if not absolutely requisite, that the complaint

If such duty is not performed by the time limited in the order, and the highway authority fail to show to the county authority sufficient cause why the order has not been complied with, the county authority may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with the reasonable remuneration of the person appointed for superintending such performance, shall be paid by the authority in default, and any order made for payment of such expenses and costs may be removed into the High Court of Justice, (w) and be enforced in the same manner as if the same were an order of such court.

Any person appointed under this section to perform the duty of a defaulting highway authority shall, in the performance and for the purpose of such duty, be invested with all the powers of such authority other than the powers of making rates or levying contributions by precept, and the county authority may from time to time, by order, change any person so appointed.

Where an order has been made by a county authority for the repair of a highway on a highway authority alleged to be in default, if such authority, within ten days after service on them of the order of the county authority, give notice to the Clerk of the Peace that they decline to comply with the requisitions of such order until their liability to repair the highway in respect to which they are alleged to have made default has been determined by a jury, it shall be the duty of the county authority either to satisfy the defaulting authority by cancelling or modifying in such manner as the authority may desire the order of the county

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should be made by a person having some direct interest in the matter. Moreover, care should be taken to insure publicity to the notice of the preliminary inquiry, so that the authority alleged to be in default as well as the complainant may have an opportunity of being heard."

The new provisions do not take away the right to apply to a justice under 25 & 26 Vict. c. 61, s. 18 (*ante*, p. 100), where a highway within the jurisdiction of a Highway Board is out of repair. It will be noticed, however, that while the former enactment is only applicable where the highway is within a highway district, the present section applies to all highways, with the exception (arising from the definition of "highway area" in s. 14, and of "urban sanitary district" in s. 38) of those which are within the limits of boroughs with separate quarter sessions.

(w) That is to say, by *certiorari*, in the same manner as other orders of justices.

authority, or else to submit to a jury the question of the liability of the defaulting authority to repair the highway.

If the county authority decide to submit the question to a jury they shall direct a bill of indictment to be preferred to the next practicable assizes to be holden in and for their county, with a view to try the liability of the defaulting authority to repair the highway. Until the trial of the indictment is concluded the order of the county authority shall be suspended. On the conclusion of the trial, if the jury find the defendants guilty, the order of the county authority shall forthwith be deemed to come into force; but if the jury acquit the defendants the order of the county authority shall forthwith become void.

The costs of the indictment, and of the proceedings consequent thereon, shall be paid by such parties to the proceedings as the court before whom the case is tried may direct. Any costs directed to be paid by the county authority shall be deemed to be expenses properly incurred by such authority, and shall be paid accordingly out of the county rate; and any costs directed to be paid by the highway authority shall be deemed to be expenses properly incurred by such authority in maintenance of the roads within their jurisdiction, and shall be paid out of the funds applicable to the maintenance of such roads. (x)

#### *Duration of Office of Waywarden.*

11. Notwithstanding anything in the Highway Acts, waywardens shall continue in office till the thirtieth day of April in the year following the year in which they were elected, and on that day their successors shall come into office. (y)

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(x) As to the funds applicable to the maintenance of roads in the case of an urban sanitary authority, see s. 216 of the Public Health Act, 1875 (38 & 39 Vict. c. 55). In the case of a Highway Board, the costs will be payable out of the district fund, see s. 7, *ante*, p. 187; and in the case of a highway parish under a surveyor or surveyors of highways, they will be payable out of the highway rate.

(y) With regard to the election of waywardens, see 25 & 26 Vict. c. 61, s. 10, and notes, *ante*, p. 91. Formerly, under that enactment, a waywarden was to continue to act until his successor was appointed; and upon such appointment being made, his successor would come into office. Under the present enactment the new waywarden, appointed during the term of office of his predecessor, will not have



*Repeal of part of s. 7, of 25 & 26 Vict. c. 61.*

12. So much of section seven of the Highway Act, 1862, as prohibits the inclusion in a highway district of any parish or place the highways of which were, at the time of the passing of that Act, or within six months afterwards, under the superintendence of a Board established in pursuance of section eighteen of the principal Act, unless with the consent of such Board, is hereby repealed. (z)

## MAIN ROADS.

*Disturnpiked Roads to become Main Roads, and half the expense of maintenance to be contributed out of County Rate.*

13. For the purposes of this Act, and subject to its provisions, any road which has, within the period between the thirty-first day of December one thousand eight hundred and seventy and the date of the passing of this Act, (a) ceased to be a turnpike road, and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road (b); and one half of the expenses incurred from and

power to act as waywarden until the 30th of April following the date of his appointment. An out-going waywarden is re-eligible for appointment under 25 & 26 Vict. c. 61, s. 10.

(z) Under s. 18 of the Highway Act, 1835, here mentioned, a "Board for repair of the highways" may be appointed by the vestry in a parish of which the population, according to the last census for the time being, exceeds five thousand. Hitherto a parish under such a Board could only be included in a highway district formed in pursuance of the Act of 1862, if the Board consented to the inclusion; now, however, proceedings for the formation of a Highway Board may be taken without reference to such parochial Board, though they would no doubt be entitled to oppose the formation of the district at the quarter sessions if they thought fit.

(a) That is to say, the 16th August, 1878. The 31st December, 1870, is the date since which the maintenance of disturnpiked roads has been thrown on the common funds of Highway Boards, by the 33 & 34 Vict. c. 73, s. 10, see note (e), *infra*. A return of the roads disturnpiked between the 31st December, 1870, and the 31st December, 1878, has been printed by order of the House of Commons, dated the 2nd August, 1878.

(b) See also s. 15, *post*, under which certain other roads may become "main roads," and s. 16, under which roads may cease to be main roads. Roads disturnpiked between the 31st December, 1870, and the 16th

after the twenty-ninth day of September one thousand eight hundred and seventy-eight by the highway authority in the maintenance of such road shall, as to every part thereof which is within the limits of any highway area (c), be paid to the highway authority of such area by the county authority of the county in which such road is situate out of the county rate (d), on the certificate of the surveyor of the

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August, 1878, may be prevented from becoming main roads in accordance with this section, if proceedings are taken under the first clause of s. 16, *post*.

(c) The term "highway area" is defined by the following section, but as that definition is qualified by s. 38, *post*, which excludes from the definition of the term "urban sanitary district," as used in this Act, every Municipal Borough having a separate court of quarter sessions, no contribution will be payable from the county rate towards the repairs of any disturnpiked road which may be within the limits of any such borough; and on the other hand, by reason of the second proviso to the above section, every such borough will be exempt from any contribution towards the expenses repayable from the county rate in respect of the disturnpiked roads within the county and without the limits of the borough, and those expenses will, therefore, be charged exclusively on the parishes constituting the remaining highway areas in the county. The same observations apply in the case of the metropolis, which is not a "highway area," for the purposes of this Act, and is expressly exempted from contributing towards the repayment of the expenses of maintenance of main roads beyond its limits, by the first proviso to the present section.

Where a highway district is partly in one county and partly in another, the parts will for the purposes of this section be treated as distinct highway districts in each county, see s. 19, *post*; and so also a turnpike road will be treated as a separate turnpike road in each county through which it passes, under s. 17.

(d) With regard to the county rate, see 1 Vict. c. 81; 13 & 14 Vict. c. 101, s. 10; 15 & 16 Vict. c. 81, and 21 & 22 Vict. c. 33.

"The Act does not prescribe in express terms how often or at what periods the repayments should be made, but it seems evident from section 18 that the Legislature contemplated that they should be made yearly. With regard to the date at which the year should terminate, it will be seen that in future the general accounts of the highway authorities of all highway districts and highway parishes are to be made up and balanced to the 25th of March in each year for the purpose of audit, and the most convenient arrangement will doubtless be that the accounts to be transmitted to the county authority should cover the same period, and the repayments be made accordingly. This arrangement, will, however, necessitate that the first accounts and repayments should be in respect of half a year only, terminating on the 25th March next." *Circular letter of the Local Government Board of the 18th Sept., 1878.*

county authority, or of such other person or persons as the county authority may appoint, to the effect that such main road has been maintained to his or their satisfaction. (e)

Provided that no part of such expenses shall be included in—

- (1.) Any precept or warrant for the levying or collection of county rate within the metropolis, (f) subject and without prejudice to any provision to be hereafter made; or
- (2.) Any order made on the council of any borough having a separate court of quarter sessions under section one hundred and seventeen of the Municipal Corporation Act, 1835. (g)

The term “expenses” in this section shall mean the cost of repairs defrayed out of current rates, and shall not include any repayment of principal moneys borrowed, or of interest payable thereon.

#### *Description of Highway Areas.*

14. The following areas shall be deemed to be highway areas for the purposes of this Act ; (that is to say,)

For the purposes of the above provisions every liberty not being assessable to the county rate of the county or counties within which it is locally situate (as Peterborough, Ripon, the Isle of Ely, and the Cinque Ports), is, by s. 38, *post*, to be deemed to be a separate county, and the county within which any such liberty is situate will consequently not be liable to contribute to the maintenance of main roads in the liberty.

(e) The whole of the expense of maintenance of the portion within any highway district of a road which ceased to be a turnpike after the 9th August, 1863, was formerly (that is to say, since the 31st December, 1870, and previously to the passing of the present Act), charged on the district fund by s. 10 of the 33 & 34 Vict. c. 73, *post*, p. 268; and now the portion of the expense of maintenance of a main road, which is not paid out of the county rate under the present provision will still be charged on that fund. The contribution from the county rate, may be withheld if the highway authority fails to comply with the provisions of s. 18, *post* (p. 204), relating to the accounts of expenditure on the maintenance of main roads.

(f) “Metropolis,” here includes the City of London; see s. 38, *post*. See also note (c), *ante*, p. 200.

(g) See note (c), *ante*, p. 200.

- (1.) Urban sanitary districts: (*h*)
- (2.) Highway districts: (*i*)
- (3.) Highway parishes (*j*) not included within any highway district or any urban sanitary district.

*Power to declare Ordinary Highway to be a Main Road.*

15. Where it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such highway authority may apply to the county authority for an order declaring such road, as to such parts as aforesaid, to be a main road; and the county authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, (*k*) and, if satisfied that it ought to be a main road, shall make an order accordingly (*l*).

A copy of the order so made shall be forthwith deposited at the office of the Clerk of the Peace of the County, and shall be open to the inspection of persons interested at all reasonable hours; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority made within a period of not more than six months after the making of the first-mentioned order.

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(*h*) The term "urban sanitary district" in this Act does not include all urban sanitary districts as defined by the Public Health Act, 1875, but all boroughs having separate courts of quarter sessions, and all parts of parishes which are included in such boroughs for the purpose of the repairs of highways, are excluded from the term by s. 38, *post*, p. 222.

(*i*) "Highway district" means a district constituted in pursuance of the Highway Acts, 1862 and 1864, or one of those Acts; s. 38, *post*.

(*j*) A "highway parish" is a parish or place included or capable of being included in a highway district; s. 38, *post*.

(*k*) The section does not specify any particular person who shall make the inspection, and the justices may, therefore, cause the road to be inspected by members of their own body, or by their surveyor.

(*l*) It will be noticed that the county authority are not empowered to declare a road to be a main road, unless the highway authority of the district in which the road is situated have made an application to them with that object. As to the incidence of the expenses of maintenance of "main roads," see s. 13, *ante*.

Roads may cease to be main roads in pursuance of s. 16.

*Power to reduce Main Road to status of Ordinary Highway.*

16. If it appears to a county authority that any road within their county which, within the period between the thirty-first day of December one thousand eight hundred and seventy and the date of the passing of this Act, (*m*) ceased to be a turnpike road ought not to become a main road in pursuance of this Act, such authority shall, before the first day of February one thousand eight hundred and seventy-nine, make an application to the Local Government Board for a provisional order declaring that such road ought not to become a main road. (*n*)

Subject as aforesaid, where it appears to a county authority that any road within their county which has become a main road in pursuance of this Act ought to cease to be a main road and become an ordinary highway, such authority may apply to the Local Government Board for a provisional order declaring that such road has ceased to be a main road and become an ordinary highway.

The Local Government Board, if of opinion that there is probable cause for an application under this section, shall cause the road to be inspected, and if satisfied that it ought not to become or ought to cease to be a main road and become an ordinary highway shall make a provisional order accordingly, to be confirmed as hereinafter mentioned. (*o*)

(*m*) See note (*e*) on s. 13, *ante*, p. 201.

(*n*) The provisional order must subsequently be confirmed by Parliament, see s. 34, *post*. If no such order be made, the road will be a main road by virtue of the first clause of s. 13, *ante*.

(*o*) See s. 34, *post*, as to the confirmation of provisional orders.

The following notes on the above clause were contained in the circular letter of the Local Government Board of the 18th Sept., 1878:—  
“If the Local Government Board, after causing the road to be inspected, consider that the road ought not to become a main road, it will be their duty to make a Provisional Order accordingly, the expenses of which will have to be defrayed by the county authority. In the application to the Board the grounds upon which it is based should be distinctly stated, and the President would impress upon the justices, that with respect to roads which have become disturnpiked prior to the passing of the Act, and within the period before-mentioned, it is absolutely necessary, if they are not to become main roads, that the application for the Provisional Orders should be made to the Board *before the 1st day of February next*. Moreover, it is very desirable that the applications should be made as soon as possible after

All expenses incurred in or incidental to the making or confirmation of any order under this section shall be defrayed by the county authority applying for such order.

*Turnpike Road in several Counties.*

17. Where a turnpike road subject to one trust extends into divers counties, such road, for the purposes of this Act, shall be treated as a separate turnpike road in each county through which it passes. (p)

*Accounts of Expenses of Maintenance of Main Roads.*

18. Every highway authority shall keep, in such form as may be directed by the county authority, a separate account of the expenses of the maintenance of the main roads within their jurisdiction, (q) and shall forward copies thereof to the county authority at such time or times in every year as may be required by the county authority, and the accounts so kept shall, where the accounts of the highway authority are audited under this Act or under section two hundred and forty-seven of the Public Health Act, 1875, be audited in the same manner as the other accounts of such authority, and where the accounts of the highway authority are not so audited shall be subject to such audit as the county authority may direct. (r)

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the ensuing Epiphany Sessions, and even earlier if practicable, inasmuch as if the applications are numerous it may be impossible for the department to deal with them in time to introduce the confirming Bills within the period prescribed by the Standing Orders of the House of Lords. It should be added that, subject to the restriction as to roads disturnpiked before the passing of the Act, the provisions with respect to Provisional Orders will apply to roads which, having become main roads, ought afterwards, from a change of circumstances, to cease to be such."

A Parliamentary Return, containing a list of the roads which have become disturnpiked since the 31st of December 1870, was ordered to be printed on the 2nd August, 1878.

(p) See s. 19, with regard to highway districts partly situated in separate counties.

(q) In the case of a highway district situate in more than one county, it will be necessary for the Board to keep a separate account of these expenses in respect of each county; see s. 19, *infra*.

(r) The accounts of Highway Boards, and of surveyors of highways of highway parishes (including in that term boards appointed under

If any highway authority makes default in complying with the provisions of this section, or with any directions given in pursuance thereof by the county authority, the county authority may withhold all or any part of the contribution payable by them under this Act (s) towards the expenses of the maintenance of main roads, by such highway authority for the year in which such default occurs.

*Highway District situate in more than one County.*

19. Where a highway district is situate in more than one county, the provisions of this Act, with respect to the expenses of the maintenance of main roads, shall apply as if the portion of such district situate in each county were a separate highway district in that county. (t)

*Repairs of Main Roads in certain cases.*

20. Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority from time to time, by order, to declare any main road or part of a main road within their county to be repairable to the extent only and in manner provided by section thirteen of this Act, either by the county or by the hundred in which such main road or part is situate as they think fit; and where a main road or part thereof is declared

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5 & 6 Wm. IV. c. 50, s. 18), are audited under s. 9, *ante*, and those of local boards and improvement commissioners under 38 & 39 Vict. c. 55, s. 247, by the auditors of accounts relating to the relief of the poor. The only other highway authorities to whom these provisions apply are the urban sanitary authorities of boroughs not having separate quarter sessions, whose accounts relating to other matters than highways are audited by the auditors appointed in pursuance of the Municipal Corporation Act, 1835 (5 & 6 Wm. IV. c. 76, ss. 37, 93). The accounts of the last-mentioned authorities relating to the maintenance of highways will not necessarily be audited by the municipal auditors, for by the present enactment they are to be subject to such audit as the county authority may direct.

(s) See s. 13, *ante*, p. 200.

(t) See also s. 17, *ante*, which provides for the case of a turnpike road extending into more than one county.

to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged. (u)

### BRIDGES.

*Certain existing Bridges may be accepted by County Authority.*

21 Any bridge erected before the passing of this Act in any county without such superintendence as is provided in section five of the statute of the forty-third year of King George the Third, chapter fifty-nine, (v) and which

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(u) Section 20 is thus explained by the Local Government Board in their circular letter of the 18th September, 1878, addressed to the Clerks of the Peace of Counties:—

“The Act also contains a provision that in any county in which certain of the bridges are repairable by the hundreds, the county authority may, by order, declare any main road wholly or partly within the county to be repairable (but to the extent only and in manner provided by section 13) either by the county or the hundred in which the road or part is situate. The wording of this section, which was introduced at a very late stage of the Bill, and is limited in its application to the county of Lancaster chiefly, is somewhat obscure; but it may be assumed that the effect of declaring a main road repairable by the hundred is simply intended to be that the hundred rate shall be substituted for the county rate as the fund from which a moiety of the cost is to be repaid to the highway authorities. The justices, however, will not fail to observe that where the alternative given by the section is adopted, it is desirable that all the main roads in the county should be declared to be repairable by the several hundreds through which they pass, otherwise the ratepayers of those hundreds will not only have to contribute towards the roads within their own hundreds, but also towards any roads within the county in respect of which a contribution is payable from the county rate.”

With regard to bridges repairable by the hundred in the county of Kent, see 38 & 39 Vict. c. cxciv., s. 10, *post*, p. 281.

(v) Section 5 of the 43 Geo. III, c. 59, enacts as follows: “For the more clearly ascertaining the description of bridges hereafter to be erected, which inhabitants of counties shall and may be bound or liable to repair and maintain, be it further enacted, that no bridge hereafter (*i.e.* after the 24th June, 1803) to be erected or built in any county by and at the expense of any individual or private person or



is certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair.

*Contribution out of County Rates towards erecting Bridges.*

22. The county authority may make such contribution as it sees fit out of the county rates towards the cost of any bridge to be hereafter erected, after the same has been certified in accordance with the provisions of section five of the statute of the forty-third year of King George the Third, chapter fifty-nine as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one half the cost of erecting such bridge (*w*).

EXTRAORDINARY TRAFFIC.

*Power of Road Authority to recover expenses of extraordinary Traffic.*

23. Where by a certificate of their surveyor it appears to the authority which is liable or has undertaken to repair any highway, whether a main road or not, that,

persons, body politic or corporate, shall be deemed or taken to be a county bridge, or a bridge which the inhabitants of any county shall be compellable or liable to maintain or repair, unless such bridge shall be erected in a substantial and commodious manner, under the direction or to the satisfaction of the county surveyor or person appointed by the justices of the peace at their general quarter sessions assembled, or by the justices of the peace of the county of Lancaster at their annual general sessions; and which surveyor or person so appointed is hereby required to superintend and inspect the erection of such bridge when thereunto required by the party or parties desirous of erecting the same; and in case the said party or parties shall be dissatisfied, the matter shall be determined by the said justices respectively at their next general quarter sessions, or at their annual general sessions in the county of Lancaster."

The 43 Geo. III., c. 59, and the other statutes relating to bridges, will be found in the appendix to Glen's "Treatise on the Law of Highways."

(*w*) See the note to the preceding section.

A county bridge may be improved or rebuilt on its original site, or any more convenient site within a distance of two hundred yards, at

having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid. (x)

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such authority as is mentioned in this section for the payment to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

#### DISCONTINUANCE OF UNNECESSARY HIGHWAYS.

*Unnecessary Highways may be declared not repairable at the public expense.*

24. If any authority liable to keep any highway in repair is of opinion that so much of such highway as lies within any parish situate in a petty sessional division (y) is unnecessary for public use, and therefore ought not to be maintained at the public expense, such authority (in

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the expense of the county, under 43 Geo. III. c. 59, s. 2; and money may be borrowed for the purpose under 4 & 5 Vict. c. 49, s. 1.

Bridges may be rebuilt on disturnpiked roads under 38 & 39 Vict. c. xciv., s. 8, *post*, p. 280. See also 27 & 28 Vict. c. 101, s. 48, *ante*, p. 170, under which the building or improvement of bridges is included in the term "improvement of highways."

(x) In the case of damage done to a bridge by a locomotive passing over it, such damage is to be forthwith repaired by and at the expense of the owner or person in charge of the locomotive, under the 24 & 25 Vict. c. 70, s. 7, *post* p. 232.

Further, with regard to the restrictions placed on the use of heavy vehicles, when drawn or propelled by other than animal power on roads, see the Locomotive Acts, *post*, Part II.

(y) See the definition of "petty sessional division" in s. 38, *post*, p. 223.

this section referred to "as the applicant authority") may apply to the court of summary jurisdiction of such petty sessional division to view by two or more justices, being members of the court, the highway to which such application relates, and on such view being had, if the court of summary jurisdiction is of opinion that the application ought to be proceeded with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such highway, and by public notice, appoint a time and place, not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such highway being declared unnecessary for public use, and not repairable at the expense of the public.

On the day and at the place appointed, the court shall hear any persons objecting to an order being made by the court that such highway is unnecessary for public use and ought not to be repairable at the public expense, and shall make an order either dismissing the application or declaring such highway unnecessary for public use, and that it ought not to be repaired at the public expense.

If the court make such last-mentioned order as aforesaid, the expenses of repairing such highway shall cease to be defrayed out of any public rate. (z)

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(z) By the 27 & 28 Vict. c. 101, s. 21, *ante*, p. 140, a Highway Board may obtain an order of quarter sessions for rendering an unnecessary highway no longer repairable by the inhabitants at large, in the manner provided by ss. 84-93 of the Highway Act, 1835, for stopping up a highway; but the method now provided by the above section, which applies to urban sanitary authorities (other than those of boroughs with separate quarter sessions), and to surveyors of highway parishes, as well as to highway boards, affords a simpler mode of proceeding; application under the section will be made to petty sessions instead of to quarter sessions, though a subsequent application to render the highway again repairable at the public expense, under the latter part of the section, must be made to quarter sessions.

Although the justices declare the highway "unnecessary for public use," it does not appear that the effect of their order will be to deprive the public of their right of way over the highway, for it will be noticed that the latter portion of the section speaks of the road as being "a highway" subsequently to the making of the order by justices. If therefore, it is desired that the highway shall be actually stopped up, it will still be necessary to obtain an order of quarter sessions under ss. 84-93 of the Highway Act, 1835.

HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878,

notice of the time and place appointed for hearing under this section shall be given by the applicant authority as follows ; that is to say,

- (1.) By advertising a notice of the time and place appointed for the hearing and the object of the hearing, with a description of the highway to which it refers in some local newspaper circulating in the district in which such highway is situate once at least in each of the four weeks preceding the hearing ; and
- (2.) By causing a copy of such notice to be affixed, at least fourteen days before the hearing, to the principal doors of every church and chapel (a) in the parish in which such highway is situate, or in some conspicuous position near such highway.

And the application shall not be entertained by the court until the fact of such public notice having been given is proved to its satisfaction.

If at any time after an order has been made by a court of summary jurisdiction under this section, upon application of any person interested in the maintenance of the highway in respect of which such order has been made, after one month's previous notice in writing thereof to the applicant authority, (b) it appears to the court of quarter sessions that from any change of circumstances since the time of the making of any such order as aforesaid such highway has become of public use, and ought to be maintained at the public expense, the court of quarter sessions may direct that the liability of such highway to be maintained at the public expense shall revive from and after such day as they may name in their order, and such highway shall thenceforth be maintained out of the rate applicable to payment of the expenses of repairing other highways repairable by the applicant authority ; and the said court of quarter sessions may by their order direct the expenses of and incident to such application to be paid as they may see fit.

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(a) This is to be construed as referring only to churches and chapels of the Established Church, see *Ormerod v. Chadwick* (16 M. & W. 367), *ex parte Warblington* (18 Jur. 494).

(b) As to the meaning of the "applicant authority," see the commencement of the section.

Any order of a court of summary jurisdiction under this section shall be deemed to be an order from which an appeal lies to a court of quarter sessions. (c)

#### APPOINTMENT OF SURVEYORS IN CERTAIN PARISHES.

##### *Removal of doubt as to Appointment of Surveyors in certain Parishes.*

25. Whereas doubts have arisen whether a surveyor of highways can be appointed, in pursuance of the Highway Act, 1835, for a parish which does not maintain any highway: (d) Be it therefore enacted, that it shall be lawful for the inhabitants in vestry assembled of any parish or place having a known legal boundary (notwithstanding that the inhabitants at large are not for the time being liable to maintain any highway or to contribute to any rate applicable to the maintenance of highways), or, on the neglect or refusal of such inhabitants, for the justices at a special sessions for the highways or in petty sessions assembled, at any time to exercise all the powers of the Highway Acts with respect to the election or appointment of a surveyor of highways with or without a salary for such parish or place; (e) and any surveyor so elected or

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(c) With respect to appeals to quarter sessions under this Act, see s. 37, *post*, p. 218.

(d) The doubts here mentioned arose in a parish, not within an urban sanitary district or a highway district, in which all the highways were repairable by the Crown in pursuance of a Local Act of Parliament, with the exception of certain new streets which had been formed through an estate recently laid out for building. These new streets led to a railway station, and were much used by the public, but the owner of the estate could not proceed under s. 23 of the Highway Act, 1835, to render the streets repairable by the inhabitants at large, since there was no surveyor of highways for the parish; and as it was doubtful whether such surveyor could be appointed under the Act, unless there were highways repairable by the inhabitants of the parish, the present clause was suggested and drawn by the Editor of this work, and ultimately inserted in the Bill for the Act.

See 27 & 28 Vict. c. 101, s. 5, *ante*, p. 128, by which a place in which there are no highways repairable at the expense of the place, is to be deemed a "place separately maintaining its own highways" "for the purposes of the Highway Acts;" and see also the case of *Reg. v. Inhabitants of Central Wingland*, *ante*, p. 111.

(e) As to the election of surveyors of highways by the inhabitants

appointed shall have all the powers and duties (including the power of making, assessing, and levying of highway rates) of a surveyor under the Highway Acts.

### BYELAWS BY COUNTY AUTHORITY.

#### *Power of County Authority to make Byelaws.*

26. A county authority (*f*) may from time to time make, with respect to all or any main road (*g*) or other highways (*h*) within any highway area in their county, and when made (*i*) alter or repeal, byelaws (*j*) for all or any of the purposes following; that is to say,

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in vestry assembled, see 5 & 6 Wm. IV., c. 50, s. 6, *ante*, p. 91; and as to their appointment by justices on the neglect or default of the inhabitants, see s. 11 of the same Act, *ante*, p. 92.

(*f*) That is, the justices of a county in general or quarter sessions assembled, see s. 38, *post*.

(*g*) As to the meaning of the term "main road," see ss. 13, 15, *ante*.

(*h*) It will be noticed that byelaws may be made under this section with respect to *any highways*, that is, any roads or paths over which there is a public right of way, whether they are repairable by the inhabitants at large or not.

(*i*) For the definition of "highway area," see s. 14, and notes, *ante*, p. 202. Byelaws made under this section will not apply to any highway within the area of a borough having separate quarter sessions.

(*j*) These byelaws will not come into force, nor will any subsequent alteration or repeal of them be of any validity, until confirmed by the Local Government Board, under s. 35, *post*; and such confirmation will not be made unless a month's notice of the intention to apply for it has been advertised.

With reference to the above section, the following remarks are made in the circular letter of the Local Government Board of the 18th Sept. 1878: "It is obvious that great hardship and confusion would be occasioned in the case of the byelaws made for the regulation of waggons and other vehicles used for heavy traffic, unless the regulations adopted in each county are as far as practicable of a uniform character, and with a view of securing this result without causing unnecessary trouble or delay, the President suggests that the drafts of any byelaws which the county authority propose to make should be transmitted to the Board for comparison with those proposed by other authorities before the same are finally adopted by the county authority. In framing byelaws it is essential to bear in mind that they must be reasonable, and that the restrictions which they impose should not interfere oppressively with the reasonable rights or claims of those

- (1.) For prohibiting or regulating the use of any waggon wain cart or carriage drawn by animal power (*k*) and having wheels of which the fellies or tires are not of such width in proportion to the weight carried by, or to the size of, or to the number of wheels of such waggon wain cart or carriage, as may be specified in such byelaws; and
- (2.) For prohibiting or regulating the use of any waggon wain cart or other carriage drawn by animal power (*k*) not having the nails on its wheels countersunk in such manner as may be specified in such byelaws, or having on its wheels bars or other projections forbidden by such byelaws; and
- (3.) For prohibiting or regulating the locking of the wheel of any waggon wain cart or carriage drawn by animal power (*k*) when descending a hill, unless there is placed at the bottom of such wheel during the whole time of its being locked a skidpan slipper or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel; (*l*) and
- (4.) For prohibiting or regulating the erection of gates across highways, and prohibiting gates opening outwards on highways; (*m*) and

whom they are intended to control. Moreover, byelaws are intended to supplement and not to supersede or vary the law; and in framing them a safe rule to follow is that a byelaw which merely repeats a statutory enactment is in fact surplusage, whilst one which is at variance either with an enactment or any recognised legal principle is altogether a nullity and consequently incapable of being enforced."

(*k*) It must be noticed that the byelaws made under clauses (1), (2), and (3), of this section can only apply to waggons, &c., drawn by *animal power*. Waggons, &c., drawn or propelled by other than animal power, are "locomotives," with respect to which the Locomotive Acts (*post*, pp. 224 to 256) contain regulations.

(*l*) Turnpike trustees may, under the General Turnpike Act, 3 Geo. IV., c. 126, s. 126, prohibit under a penalty the locking of the wheels of waggons, &c., on turnpike roads unless skidpans or slippers are used, and under s. 121 of the same Act it is an offence to use "any tipstick, joggle, or other instrument, for the purpose of retarding the descent of any cart or other carriage down any hill, in such manner as to destroy, injure, or disturb the surface of any turnpike road."

(*m*) The Towns Police Clauses Act, 1847, by s. 71, which is in force in all urban sanitary districts, requires doors, gates, and bars opening

(5.) For regulating the use of bicycles.

Fines to be recovered summarily may be imposed by any such byelaws on persons breaking any byelaw made under this section, provided that no fine exceeds for any one offence the sum of two pounds, and that the byelaws are so framed as to allow of the recovery of any sum less than the full amount of the fine. (*n*)

### SAVING FOR MINERALS.

*To whom Minerals under Disturnpiked Roads are to belong.*

27. Notwithstanding anything contained in section sixty-eight of the Public Health Act, 1848, or in section one hundred and forty-nine of the Public Health Act, 1875, (*o*) all mines and minerals of any description whatsoever under any disturnpiked road or highway which has or

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upon any street, to be hung or placed so as not to open outwards, except when, in the case of public buildings, the urban sanitary authority allow them to be otherwise hung or placed. And, under s. 72 of the same Act, the urban sanitary authority may alter any door, gate, or bar hung so as to open outwards upon any street, before the passing of the Public Health Act, 1875.

(*n*) As to the recovery of fines, see s. 36, *post*, p. 216.

(*o*) By s. 149 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), "all streets being or which at any time become highways repairable by the inhabitants at large, within any urban district, and the pavements, stones, and other materials thereof, and all buildings, implements, and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority," and a similar provision had been made by s. 68 of the Public Health Act, 1848. With reference to the present enactment, the Local Government Board in a circular letter of the 30th September, 1878, addressed to urban sanitary authorities, remark as follows:—

"It should be noted that section 27 of the Act contains a provision by which all mines and minerals of every description, under any disturnpiked road or highway vested in the urban sanitary authority by virtue of section 68 of the Public Health Act, 1848, or section 149 of the Public Health Act, 1875, will belong to and may be worked by the person who would be entitled thereto if the road or highway had not become so vested. This section removes a doubt with respect to the ownership of minerals under highways transferred to urban sanitary authorities upon the formation of Local Government Districts, and which has been occasioned by the decision of the High Court of Judicature in the case of *Coverdale v. Charlton*, L.R. 3 Q. B. D. 376; 47 L. J. N. S. 446."



shall become vested in an urban sanitary authority (*p*) by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority, but so nevertheless that in such working and getting no damage shall be done to the road or highway.

This section shall extend to the Isle of Wight and to South Wales, as defined by the said Act of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter sixty-eight, intituled "An Act for the better management and control of the highways in South Wales." (*q*)

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## PART II.

### AMENDMENT OF LOCOMOTIVE ACTS, 1861 AND 1865.

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In the case referred to, the Queen's Bench Division held that by the effect of s. 149 of the Public Health Act, 1875, the plaintiff, to whom a Local Board had let the pasturage of strips of grass at the side of a lane, was entitled to recover damages in an action of trespass against the defendant, who had turned his cattle on to those strips of land to graze, and the learned judges (Cockburn, C.J., and Mellor, J.) stated that the property in the soil of the lane was vested in the Local Board by virtue of the enactment. The decision has now been affirmed by the Court of Appeal, W. N. 1878, 232.

(*p*) The term "urban sanitary district," in the present Act does not include a borough having a separate court of quarter sessions (see s. 38, *post*, p. 222), and it may therefore be doubted whether s. 27 applies to the urban sanitary authority of any such borough, or to any highway within their district.

(*q*) See s. 2 and note, *ante*, p. 181.

(*r*) The second part of the Act, which contains amendments of the Locomotive Acts, is placed at pp. 245-256, *post*, following those Acts.

## PART III.

## PROCEDURE AND DEFINITIONS.

*Confirmation of Provisional Order.*

34. It shall be lawful for the Local Government Board to submit any provisional order made by them under this Act (s) to Parliament for confirmation, and without such confirmation a provisional order shall not be of any validity.

*Confirmation of Byelaws.*

35. A byelaw made under this Act, (t) and any alteration made therein and any repeal of a byelaw, shall not be of any validity until it has been submitted to and confirmed by the Local Government Board.

A byelaw made under this Act shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district.

*Recovery of Penalties and Expenses.*

36. All offences, fines, and expenses under this Act, or any byelaw made in pursuance of this Act, may be prosecuted, enforced, and recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

(s) Provisional orders may be made by the Local Government Board, under s. 16, *ante*, p. 203, for preventing a road, which ceased to be a turnpike road between the 31st December, 1870, and the 16th August, 1878, from becoming a main road, or for rendering a main road an ordinary highway.

(t) Byelaws may be made by the county authority, under s. 26 (*ante*, p. 213), for regulating the width and construction of the wheels of waggons, &c., and the use of skidpan or slippers on the wheels when the waggons are descending hills, the erection of gates across or opening upon highways, and the use of bicycles. Byelaws relating to the use of locomotives may also be made under the second part of the Act, see ss. 31, 32, *post*, p. 250.

The expression "the Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same. (u)

The expression "court of summary jurisdiction" means and includes any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts: Provided that the court, when hearing and determining an information or complaint under this Act, shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty session, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace. (v)

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See the instructions of the Local Government Board, as to making byelaws in note (j) to s. 26, *ante*, p. 212.

(u) The 11 & 12 Vict. c. 43, is one of "Jervis's Acts," see the third edition of those Acts by Mr. W. C. Glen.

(v) By s. 33 of the 11 & 12 Vict. c. 43, a metropolitan police magistrate, sitting at one of the metropolitan police courts, or a stipendiary magistrate, for any other city, town, liberty, borough, or place, and sitting at a police court or other place appointed in that behalf, has power to do alone whatsoever is authorized by that Act to be done by any one or more justice or justices of the peace.

And by 21 & 22 Vict. c. 73, s. 1, "every stipendiary magistrate appointed for any city, town, liberty, borough, place, or district, sitting at a police court, or other place appointed in that behalf, shall have power to do alone any act and to exercise alone any jurisdiction which under any law now in force, or under any law not containing an express enactment to the contrary hereafter to be made, may be done or exercised by two justices of the peace, and all the provisions of any Act of Parliament, auxiliary to the jurisdiction of such justices shall be applicable also to the jurisdiction of such stipendiary magistrate."

By s. 2 of the same Act, "the authority and jurisdiction given to a stipendiary magistrate, by the enactment hereinbefore contained shall extend and apply as well to the cases when the act or jurisdiction is or hereafter may be expressly required to be done or exercised by justices, sitting or acting in petty sessions as to other cases, and any

*Form of Appeal to Quarter Sessions.*

37. If any party thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act, (*w*) the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:—

- (1.) The appeal shall be made to the next practicable (*x*) court of quarter sessions for the county or place where the decision appealed from was given holden not less than twenty-one days after the decision of the court from which the appeal is made; (*y*) and
- (2.) The appellant shall, within ten days after the pronouncing by the court of the decision appealed from, give notice to the other party and to the court of summary jurisdiction of his intention to appeal and of the ground thereof; (*z*) such notice

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enactment authorizing or requiring persons to be summoned or to appear at such petty sessions shall in the like cases authorize or require persons to be summoned or to appear before the stipendiary magistrate having jurisdiction at the police court or other place appointed for his sitting."

These last two sections do not apply to the justices at quarter sessions, or special sessions, nor to the metropolitan police magistrates. *Ibid.* ss. 3, 4.

(*w*) An order of a court of summary jurisdiction under s. 24, *ante*, made on the application of a highway authority declaring a highway unnecessary, and that it ought not to be repaired at the public expense, is expressly stated, in the last clause to that section, to be an order from which an appeal lies to a court of quarter sessions.

(*x*) That is to say, the next sessions for which the appellant can give the requisite notice of appeal.

(*y*) The twenty-one days should be reckoned exclusively of the day on which the decision is given, and also of the day of holding the sessions, see *Reg. v. Salop, JJ.* (8 A. & E. 173), which settled that an interval of a certain number of days, "at least" must be reckoned exclusively of both the days between which the interval is to elapse, and there does not seem to be any distinction between the expression, "not less than twenty-one days after," and "at least twenty-one days after."

(*z*) By 12 & 13 Vict. c. 45, s. 1, "in every case of appeal (except against a summary conviction, order of removal, order relating to a pauper lunatic, in a bastardy case, or under the revenue laws), to any court of general or quarter sessions of the peace, fourteen clear days' notice of appeal at least shall be given, and such shall be sufficient

- of appeal shall be in writing signed by the person or persons giving the same, or by his, her, or their solicitor on his, her, or their behalf; and
- (3.) The appellant shall, within three days after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow; and
  - (4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody :
  - (5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall

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notice, any Act or Acts, or any rule or practice of any court or courts, to the contrary notwithstanding; provided always that it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in such notice."

By s. 11 of the same Act, "at any time after notice given of appeal to any court of general or quarter sessions of the peace against any judgment, order, rate, or other matter (except an order in bastardy, or a proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post office), for which the remedy is by such appeal, it shall be lawful for the parties, by consent, or by order of any judge [of the High Court of Justice], to state the facts of the case in the form of a special case for the opinion of such superior court, and to agree that a judgment in conformity with the decision of such court, and for such costs as such court shall adjudge, may be entered on motion by either party, at the sessions next or next but one after such decision shall have been given; and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the court of general or quarter sessions, upon an appeal duly entered and continued."

thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

*Interpretation.*

38. In this Act—

“County” has the same meaning as it has in the Highway Acts, 1862 and 1864, (a) except that every liberty not being assessable to the county rate of the county or counties within which it is locally situate (b) shall, for the purposes of this Act other than those relating to the formation and alteration of highway districts, and the transfer of the powers of a Highway Board, be deemed to be a separate county:

“County authority” means the justices of a county in general or quarter sessions assembled:

“Borough” means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled “An Act to provide for the regulation of municipal corporations in England and Wales,” and the Acts amending the same: (c)

“Highway district” means a district constituted in

(a) By 25 & 26 Vict. c. 61, s. 2, the term “county” does not include “county of a city” or “county of a town,” but where a county is divided into ridings or other divisions having a separate court of quarter sessions, it means each such division or riding and not the entire county: all liberties and franchises (except the liberty of St. Albans, which is to be considered a county, and boroughs under the Municipal Corporation Acts) are to be considered as forming part of the county by which they are surrounded, or if surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary. And by 27 & 28 Vict. c. 101, s. 3, the term includes any division of a county that has a separate county treasurer.

(b) Such as Peterborough, Ripon, the Isle of Ely, and the Cinque Ports.

(c) Boroughs having separate courts of quarter sessions are to a certain extent exempted from the operation of the Act in consequence of the limitation placed on the meaning of “urban sanitary district,” *post*, p. 222.

pursuance of the Highway Act, 1862, and the Highway Act, 1864, or one of such Acts:

“Highway Board” means the Highway Board having jurisdiction within a highway district:

“Highway parish” means a parish or place included or capable of being included in a highway district in pursuance of the Highway Acts, 1862, and 1864, or one of such Acts: (d)

“Highway authority” means as respects an urban sanitary district the urban sanitary authority, and as respects a highway district the Highway Board, and as respects a highway parish the surveyor or surveyors or other officers performing similar duties: (e)

“Rural sanitary district” and “rural sanitary authority” mean respectively the districts and authorities declared to be rural sanitary districts and authorities by the Public Health Act, 1875: (f)

(d) Subject to the restriction contained in s. 7 of the 25 & 26 Vict. c. 61, (*ante*, p. 85), namely that there shall not be included in a highway district any part of the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan, the Isle of Wight, a local government district, nor any parish or place which is in the metropolis or the highways of which are maintained under any local Act, any “place maintaining its own highways,” including in that term any place formerly extra parochial (25 & 26 Vict. c. 61, s. 32), and any outlying and detached part of a parish (*Ibid.* s. 33), any place in which there are no highways repairable by the inhabitants at large (27 & 28 Vict. c. 101, s. 55), part of a parish included in a Local Government district for highway purposes only (*Ibid.* s. 5, and 38 & 39 Vict. c. 55, s. 216), a part of a parish in which highway expenses are defrayed out of different rates in the two parts (*Ibid.* s. 5), a part of a parish of which the remainder is within the limits of a borough (*Ibid.* s. 8), is capable of being included in a highway district in pursuance of the Acts here mentioned.

(e) A “board for repairs of the highways” in a parish, appointed under 5 & 6 Wm. IV., c. 50, s. 18, is within this definition, as the members of the board are nominated and elected “to serve the office of surveyors of the highways.”

(f) It is enacted by s. 5 of the Public Health Act, 1875, 38 & 39 Vict. c. 55, that “for the purposes of this Act, England, except the metropolis, shall consist of districts to be called respectively:—(1.) Urban sanitary district, and (2.) Rural sanitary districts, (in this Act referred to as urban and rural districts); and such urban and rural districts shall respectively be subject to the jurisdiction of local authorities called urban sanitary authorities and rural sanitary authorities (in this Act referred to as urban and rural authorities), invested with the powers in this Act mentioned.”

“Urban sanitary district” and “urban sanitary authority” mean respectively the districts and authorities declared to be urban sanitary districts and authorities by the Public Health Act, 1875, (g) except that for the purposes of this Act no borough having a separate court of quarter sessions, and no part of any such borough, shall be deemed to be or to be included in any such district, (h) and where part of a parish is

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And by s. 9 of the same Act, “the area of any union which is not coincident in area with an urban district, nor wholly included in an urban district, with the exception of those portions (if any) of the area which are included in any urban district, shall be a rural district, and the guardians of the union shall form the rural authority of such district.” Where part of the union is included in an urban district, certain of the guardians cannot act as members of the rural sanitary authority. By s. 4 the term “union” means “a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament, and includes any parish subject to the jurisdiction of a separate board of guardians.”

(g) See 38 & 39 Vict. c. 55, s. 5, quoted in the preceding note. By s. 6 of the same Act, urban districts are, (1.) Boroughs subject to the Municipal Corporation Acts (except the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, Folkestone, and Newport, Isle of Wight), (2.) Improvement Act districts constituted such before the passing of the Act, and having no part of their areas situated within a borough or local government district, and (3.) Local government districts having no part of their areas situated within a borough, and not coincident with a borough or Improvement Act district; and the urban authorities of such districts respectively are, (1.) The mayor, aldermen, and burgesses acting by the council, (2.) The Improvement Commissioners, and (3.) The Local Board. The borough of Cambridge is an Improvement Act district, the borough of Oxford is included in a local government district, and the borough of Folkestone is partly an Improvement Act district, and partly included in a local government district. Provisions are made by s. 6 for cases where boroughs, Improvement Act districts, and local government districts are wholly or partly coincident in area.

(h) A borough having a separate court of quarter sessions will therefore not come within the definition of the term “highway area” in s. 14, *ante*, p. 202, and the corporation will not be a “highway authority” as above defined, nor receive any contribution from the county rate towards the expenses of the maintenance of roads within the borough (see s. 13, and note (c), *ante*, p. 200): the highway accounts of the corporation will not be subject to audit by the district auditor under s. 9, nor will the county authority have power to enforce performance of their duty in respect of the maintenance of highways in the manner provided by s. 10. Sec. 23, however, relating to the recovery of expenses caused by extraordinary traffic is applicable to



included in such district for the purpose only of the repairs of the highways such part shall be deemed to be included in the district for the purposes of this Act: (i)

"The Metropolis" means the parishes and places mentioned in the Schedules A, B, and C, annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by Order in Council in manner in the said Act provided; also the city of London and the liberties of the said city:

"Quarter sessions" includes general sessions:

"Petty sessional division" means any division for the holding a special sessions formed or to be formed under the provisions of the Act of the ninth year of the reign of His late Majesty King George the Fourth, chapter forty-three, or any Act amending the same; also any division of a county, or of a riding, division, parts, or liberty of a county, having a separate commission of the peace, in and for which petty sessions or special sessions are usually held, whether in one or more place or places, in accordance with any custom, or otherwise than under the said last-mentioned Act; but does not include any city, borough, town corporate, or district constituted a petty sessional division by the Act of the session of the twelfth and thirteenth years of the reign of Her present Majesty, chapter eighteen, intituled "An Act for the holding of petty sessions of the peace in boroughs, and for providing places for the holding of such petty session in counties and boroughs:"

"Locomotive" means a locomotive propelled by steam or by other than animal power: (j)

"Person" includes a body of persons corporate or unincorporate.

such a corporation, and so is s. 24, which relates to the discontinuance of unnecessary highways. Byelaws made by a county authority under s. 26, would not affect such a borough, and it is doubtful whether the saving for minerals in s. 27 is applicable.

(i) The last part of this clause has reference to s. 216 of the Public Health Act, 1875, which will be found in note (z) on p. 129, *ante*.

(j) This definition relates only to part ii. of the Act, which amends the Locomotive Acts, *post*.

PART II.  
THE LOCOMOTIVE ACT, 1861.

24 & 25 VICT. CAP. 70.

AN ACT FOR REGULATING THE USE OF LOCOMOTIVES ON TURNPIKE AND OTHER ROADS, AND THE TOLLS TO BE LEVIED ON SUCH LOCOMOTIVES AND ON THE WAGGONS AND CARRIAGES DRAWN OR PROPELLED BY THE SAME. [1ST AUGUST 1861.]

WHEREAS the use of locomotives is likely to become common on turnpike and other roads: And whereas the General Turnpike and Highway Acts and many of the Local Turnpike Acts do not contain any provisions for regulating the use of locomotives on the roads to which they respectively apply, nor do they authorise the levying of tolls upon or in respect of any locomotive using the roads, or upon or in respect of any waggon or carriage drawn by locomotives: And whereas under and by virtue of certain Local Turnpike Acts tolls may be levied upon locomotives and other engines drawing or propelling waggons or carriages, or upon the waggons or carriages so drawn or propelled, which are or may be prohibitory of the use of locomotives on the roads to which the said Acts respectively apply: And whereas the weighing clauses in the General Turnpike Acts have not been framed in anticipation of traffic by locomotives, and are in many respects ill adapted to the profitable carrying of goods, or to the levying of just and adequate tolls upon waggons or carriages drawn by locomotives: And whereas it is desirable that the use of locomotives on turnpike and other roads should be regulated by uniform general provisions, and that tolls should be levied upon such

locomotives and the waggons or carriages drawn by such locomotives upon turnpike roads: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—

*Scale of Tolls to be taken after the passing of this Act.*

1. From and after the passing of this Act all Trustees, Corporations, Commissioners, and other persons acting under and in execution of any existing General or Local Turnpike Road Act (a) or Public Bridge Act (b) shall demand and take tolls not exceeding the tolls following; that is to say,

For every locomotive propelled by any power containing within itself the machinery for its own propulsion, such a toll for every two tons weight or fractional part of every two tons weight that such locomotive shall weigh as shall be equal to the toll or tolls by their respective Acts made payable for every horse drawing any waggon, wain, cart, or carriage with wheels of a width similar to those of such locomotive: or in the case of a toll by any such Act made payable being charged on the horse or horses drawing any such waggon, wain, cart, or carriage, without reference to the width of the wheels thereof, then such a toll for every two tons or fractional part thereof that such locomotive shall weigh as shall be equal to one horse drawing such waggon, wain, cart, or carriage; which tolls respectively shall be payable so often as tolls made payable as aforesaid for such waggon, wain, cart or carriage shall be payable at the same gate: Provided always, that if the wheels of such locomotive shall rest upon any shoe or other bearing the surface of which shall bear upon the ground so as to prevent the wheels

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(a) A list of the General Turnpike Acts now in force will be found at p. 257, *post*.

(b) For the Acts relating to county and borough bridges, see Glen's "Law of Highways."

coming in contact therewith, such and the same tolls only shall be demanded and payable as if the wheels thereof were of a width similar to such shoe or bearing:

For every waggon, wain, cart, or carriage drawn or propelled by any locomotive, for each pair of wheels thereof such a toll as shall not exceed the toll by their respective Acts made payable for two horses drawing any waggon, wain, cart, or carriage with wheels of a similar width, and for every additional wheel thereof one half toll in addition to the said toll; or in the case of a toll by any such Act made payable being charged on the horse or horses drawing any such waggon, wain, cart, or carriage, without reference to the width of the wheels thereof, then such a toll for each wheel as shall be equal to one horse drawing such waggon, wain, cart, or carriage; which said toll or tolls shall be payable so often as the toll made payable as aforesaid for such waggon, wain, cart, or carriage drawn by horses shall be payable at the same gate:

Provided always, that in every case where the wheels of any waggon, wain, cart, or carriage shall not all be cylindrical, as described in the Act of the third year of George the Fourth, chapter one hundred and twenty-six, section nine (c), the toll payable in respect thereof shall be one half more.

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(c) The following is the clause here referred to, giving a description of "cylindrical wheels": "Where any waggon or cart shall have the sole or bottom of the wheels thereof rolling on a flat surface, and the nails of the tire of such wheels counter-sunk and cylindrical (that is to say), of the same diameter on the inside next the carriage as on the outside, so that when such wheels shall be rolling on a flat or level surface, and shall have the opposite ends of the axletrees of such waggon, cart, or other carriage, so far as the same shall be inserted into the respective naves of the wheels thereof, horizontal, and in the continuance of one straight line without forming any angle with each other, and in each pair of wheels belonging to such carriage the lower parts, when resting on the ground, shall be at the same distance from each other as the upper part of such wheels, it shall and may be lawful for the trustees or commissioners of any turnpike road at a general meeting, if they shall think fit so to do, to make an order for every such waggon and cart to pass through any toll-gate or bar under the superintendence of the trustees or commissioners making such order,

*Repeal of former Enactments as to Tolls to be taken for Locomotives.*

2. All clauses and provisions in any local or general turnpike road Act or public bridge Act authorizing tolls to be demanded or taken upon locomotives or carriages drawn by steam or any other than animal power, different to the tolls herein provided for, shall, so far as the same relate to such tolls, be and the same are hereby repealed: provided always, that this enactment shall not be deemed or construed to extend to any tolls authorized to be taken in respect of any private roads or private bridges, or to the roads comprised in "the Commercial Roads Continuation Act, 1849." (d)

*As to the Size and Weight of Locomotives (e).*

3. Every locomotive propelled by steam or any other than animal power, not drawing any carriage, and not exceeding in weight three tons, shall have the tires of the wheels thereof not less than three inches in width, and for every ton or fractional part thereof additional weight the tires of the wheels thereof shall be increased one inch in width; and every locomotive drawing any waggon or carriage shall have the tires of the wheels thereof not less than nine inches in width; but no locomotive shall exceed seven feet in width or twelve tons in weight, except as hereinafter provided; and the wheels of every locomotive shall be cylindrical and smooth soled, or used with shoes or other bearing surface of a width not less than nine inches; (f) and the owner or owners of any locomotive

upon paying only so much of the tolls and duties as shall not be less than two thirds of the full toll or duty payable by any turnpike Act, on such waggon, cart, or other carriage, and the horses or cattle drawing the same." 3 Geo. IV., c. 126, s. 9.

(d) By s. 15 and the Schedule to the Act here mentioned (12 & 13 Vict. c. lxxvi), certain tolls are to be taken for "every carriage propelled or drawn by steam or other power than animal power, or attached to and drawn by any carriage so propelled or drawn" on the Commercial and East India Dock Roads in Middlesex and Essex.

(e) This section is repealed, so far as it affects England, by 41 & 42 Vict. c. 77, s. 28, *post*, p. 246 and other provisions are thereby made with respect to the weight of locomotives.

(f) On the construction of this provision as to shoes and other bearing surfaces, see *Stringer v. Sykes*, and *Body v. Jeffery*, *post*, pp. 247, 248.

used contrary to the foregoing provisions shall for every such offence, on summary conviction, forfeit any sum not exceeding five pounds: Provided always, that whereas it may be desirable that locomotives of a greater width than seven feet and of a greater weight than twelve tons should be allowed to be used under certain circumstances, any person desiring to use any such locomotive on any street or public highway . . within any other city or municipal or parliamentary borough, or on any turnpike road or other public highway, shall apply . . within any municipal or parliamentary borough in Scotland to the Lord Provost or other Chief Magistrate thereof, and in other places to the corporation, commissioner, trustees, and surveyors, or other persons having the charge of any such street, highway, turnpike, or other road over which it may be proposed to work such locomotive, for permission to use the same: and the said . . Lord Provost or Chief Magistrate or such corporation, commissioners, trustees, surveyor, and other persons as aforesaid, shall have power to authorize such locomotive to be used on such road or roads, or part of any road or roads, and under such condition or conditions as to them may appear desirable . . (g)

*As to the Weight on each Pair of Wheels.*

4. It shall not be lawful for any waggon, wain, cart, or other carriage so drawn or propelled as aforesaid, (h) not having cylindrical wheels, (i) to carry any greater weight than is permitted in such waggon, wain, cart, or carriage by the General Turnpike Act; (j) and it shall not

(g) As this section is repealed, as above-mentioned, so far as it relates to England, the portions relating solely to England are omitted.

(h) That is to say, by steam or any other than animal power.

(i) As to the meaning of "cylindrical wheels," see note (c) to s. 1, ante, p. 226.

(j) By 3. Geo. IV., c. 126, s. 12, "the weights hereafter next specified shall be allowed to every waggon, wain, cart, or other such carriage (that is to say) to every waggon, wain, or other four-wheeled carriage having the fellies of the wheels thereof of the breadth of nine inches at the bottom or soles thereof, together with the loading of such carriage, six tons ten hundred-weight in summer, and six tons in winter, to every cart or other such two-wheeled carriage, having the fellies of the wheels thereof of the like breadth, together with the loading of such carriage, three tons ten hundred-weight in summer, and three tons in winter; to every waggon, wain, or other such four-wheeled carriage having the fellies of the wheels thereof of the breadth of six inches and

be lawful for any waggon, wain, cart, or other carriage having cylindrical wheels to carry over or above the

less than nine inches at the bottom or soles thereof, together with the loading of such carriage, four tons fifteen hundred-weight in summer, and four tons five hundred-weight in winter; to every cart or every such two-wheeled carriage having the fellies of the wheels of the breadth last mentioned at the bottom or soles thereof, together with the loading of such last-mentioned carriage, three tons in summer, and two tons fifteen hundred-weight in winter: to every waggon, wain, or other such four-wheeled carriage having the fellies of the wheels thereof of the breadth of four inches and a half, and less than six inches at the bottom or soles thereof, together with the loading of such carriages, two tons twelve hundred-weight in summer, and two tons seven hundred-weight in winter: to every waggon, wain, or other such four-wheeled carriage having the fellies of the wheels thereof of a less breadth than four inches and a half at the bottom or soles thereof, together with the loading of such carriage, three tons fifteen hundred-weight in summer, and three tons five hundred-weight in winter: to every cart or other such two-wheeled carriage having the fellies of the wheels thereof of the breadth last-mentioned, together with the loading of such carriage, one ton fifteen hundred-weight in summer, and one ton ten hundred-weight in winter; and for the several purposes of this Act it shall be deemed summer from the 1st day of May to the 31st day of October, both days inclusive; and winter from the 1st day of November to the 30th day of April, both days inclusive."

The foregoing provision is thus tabulated in the first schedule to 4 Geo. IV., c. 95:—

"TABLE OF WEIGHTS allowed in winter and summer to carriages directed to be weighed (including the carriage and loading), by the Act of the fourth George the Fourth."

	Summer.	Winter.
	tons, cwt.	tons, cwt.
For every waggon with 9 inch wheels . . .	6 10	6 0
For every cart with 9 inch wheels . . .	3 10	3 0
For every waggon with 6 inch wheels . . .	4 15	4 5
For every cart with 6 inch wheels . . .	3 0	2 15
For every waggon with wheels of the breadth of 4½ inches . . .	4 5	3 15
For every cart with wheels of the breadth of 4½ inches . . .	2 12	2 7
For every waggon with wheels of less than 4½ inches . . .	3 15	3 5
For every cart with wheels of less than 4½ inches . . .	1 15	1 10

3 Geo. IV. c. 126, s. 13. "To every caravan or other four-wheeled carriage used for the conveyance of goods, and built and constructed with springs, shall be allowed the weights following, (that is to say)

weight of the waggon, wain, cart, or carriage, any greater weight than one ton and a half for each pair of wheels, unless the fellies, tires, or shoes are four inches or more in breadth; nor to carry a greater weight than two tons for each pair of wheels, unless the fellies, tires, or shoes are six inches or more in breadth; nor to carry a greater weight than three tons for each pair of wheels, unless the fellies, tires, or shoes are eight inches or more in breadth; and for every single wheel one half of that permitted to be carried on a pair of wheels; nor in any case to carry a greater weight than four tons on each pair of wheels, or two tons on each wheel; but if such waggons, wains, or other carriages are built and constructed with springs upon each axle, then they shall be allowed to carry one sixth more weight in addition to the above-mentioned weights upon each pair of wheels: provided always, that the regulation of weight herein mentioned and provided shall not extend to any waggon, wain, cart, or other carriage carrying only one tree, or one log of timber, or one block of stone, or one cable or rope, or one block, plate, roll, or vessel of iron or other metal, or compounded of

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for every such carriage three tons and fifteen hundred-weight in winter, and four tons and five hundred-weight in summer."

Sec. 14. "To each and every dray with two wheels, of not less than four inches and a half in breadth, and drawn by not more than three horses, and used in London or within the bills of mortality, there shall be allowed at all times of the year, together with the loading of such dray, the full weight of two tons six hundred-weight; anything in this or any other Act of Parliament to the contrary notwithstanding."

Section 15 provides for the levying of additional tolls for over-weight beyond the weights allowed by the three preceding sections, thus showing that those sections were not intended to prohibit the carrying of weights greater than the weights so "allowed." Sec. 4 of the Locomotive Act, 1861, however, absolutely prohibits in the case there mentioned, the carrying of any greater weight than is "permitted" in the waggon, &c., by the General Turnpike Act.

Sec. 16. "The regulations of weight hereinbefore mentioned and provided shall not extend or be deemed or construed to extend to any waggons, carts, or other carriages carrying only manure or lime for the improvement of land, or any hay, straw, fodder, or corn carried for sale, nor to any waggons, carts, or other carriages carrying only one tree or one log of timber, or one block of stone, or one cable or rope; nor shall the said regulations of weight extend to any chaise, marine, coach, berlin, barouche, sociable, chariot, calash, hearse, break, gig, chaise, or taxed cart."



any two or more metals cast, wrought, or united in one piece.

5. *Power to Secretary of State to prohibit the use of Locomotives destructive to Highways or dangerous to the Public. (k)*

*Use of Locomotives restricted over Suspension and other Bridges.*

6. It shall not be lawful for the owner or driver of any locomotive to drive it over any suspension bridge nor over any bridge on which a conspicuous notice has been placed, by the authority of the surveyor or persons liable to the repair of the bridge, that the bridge is insufficient to carry weights beyond the ordinary traffic of the district, without previously obtaining the consent of the surveyor of the road or bridgeman under whose charge such bridge shall be for the time being, or of the persons liable to the repair of such bridge; and in case such owner of the locomotive and surveyor of the road or bridge, or bridgeman, shall differ in opinion as to the sufficiency of any bridge to sustain the transit of the locomotive, then the question shall be determined by an officer to be appointed, on the application of either party, by *one of Her Majesty's principal Secretaries of State, (l)* whose certificate of sufficiency of such bridge shall entitle the owner of the locomotive to take the same over such bridge. (m)

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(k) This section, which authorized the Secretary of State to make orders, to be published in the *London Gazette*, prohibiting the use of particular descriptions of locomotives within any specified limits, and all orders so made, are now repealed by 28 & 29 Vict. c. 83, s. 2, *post*, p. 237.

Under s. 26 of the 41 & 42 Vict. c. 77, *ante*, p. 212, a county authority may now make byelaws prohibiting or regulating the use of waggons, &c., drawn by animal power; and by ss. 31, 32 of the same Act, byelaws may be made by county and certain other authorities for regulating the use of locomotives on highways, for prohibiting their use upon unsafe bridges, and in the case of county authorities for requiring them to be licensed.

(l) Now the Local Government Board, see 38 & 39 Vict. c. 55, sch. V, part iii. *post*, p. 280.

(m) Under 41 & 42 Vict. c. 77, s. 31, *post*, p. 250, the Corporation in the City of London, the Metropolitan Board of Works within their jurisdiction, the town council in any borough having a separate court of quarter sessions, or the county authority elsewhere, may make byelaws for preventing the use of locomotives upon every bridge where they are satisfied that such use would be attended with danger to the public.

*Damage caused by Locomotives to Bridges to be made good by Owners.*

7. Where any turnpike or other roads, upon which locomotives are or hereafter may be used, pass or are or shall be carried over or across any stream or watercourse, navigable river, canal, or railway, by means of any bridge or arch (whether stationary or moveable), and such bridge or arch, or any of the walls, buttresses, or supports thereof, shall be damaged by reason of any locomotive or any waggon or carriage drawn or propelled by or together with a locomotive passing over the same or coming into contact therewith, none of the proprietors, undertakers, directors, conservators, trustees, commissioners, or other person interested in or having the charge of such navigable river, canal, or railway, or the tolls thereof, or of such bridge or arch, shall be liable to repair or make good any damage so to be occasioned, or to make compensation to any person for any obstruction, interruption, or delay which may arise therefrom to the use of such bridge or arch, navigable river, canal, or railway, but every such damage shall be forthwith repaired to the satisfaction of the proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons as aforesaid, respectively interested in or having the charge of such river, canal, or railway, or the tolls thereof, or of such bridge or arch, by and at the expense of the owner or owners or the person or persons having the charge of such locomotive at the time of the happening of such damage; and all such owner and owners, person and persons having the charge of such locomotive as aforesaid, shall also be liable, both jointly and severally, to reimburse and make good as well to the proprietors, undertakers, directors, conservators, trustees, commissioners, and other persons interested in or having the charge of any such navigable river, canal, or railway, or the tolls thereof, or of such bridge or arch, as to all persons navigating on or using, or who but for such obstruction, interruption, or delay would have navigated on or used the same, all losses and expenses which they or any of them may sustain or incur by reason of any obstruction, interruption, or delay, such losses

and expenses to be recoverable by action at law, which action, in case of such proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons so interested as aforesaid, may be brought in the name or names of their agent or agents, clerk or clerks for the time being, or by any person or persons legally authorized to act in their behalf. (n)

*Locomotives propelled by Steam to consume their own Smoke.*

8. *Every locomotive propelled by steam or any other than animal power to be used on any turnpike road or public highway shall be constructed on the principle of consuming and so as to consume its own smoke; and any person using any locomotive not so consuming its own smoke shall, on conviction thereof before any two of Her Majesty's justices of the peace, forfeit any sum not exceeding five pounds for every day during which such locomotive shall be used on any such turnpike road or public highway.* (o)

9. *As to the number of persons in charge of Locomotive and Waggon. Lights to be used at night.* (p)

(n) See also the saving for rights of action existing independently of this Act, in s. 13, *post*; also 28 & 29 Vict. c. 83, s. 12, *post*, p. 243.

It has been held that the above section 'does not apply to public bridges repairable by the inhabitants of a county so as to relieve them from their liability at common law to repair, and render the owner of the locomotive liable to an indictment for the non-repair of such a bridge so damaged by the locomotive.—*Reg. v. Kitchener*, 43 L. J. M. C. 9.

Generally, with regard to the repair and maintenance of bridges at the expense of a county or borough, see the County and Borough Bridges Acts, in Glen's "Law of Highways."

By 43 Geo. III., c. 59, s. 4, the inhabitants of counties shall and may sue for any damages done to bridges and other works maintained and repaired at the expense of such counties respectively in the name of their surveyor.

(o) This section is repealed, so far as it applies to England, and a more carefully worded clause substituted for it by 41 & 42 Vict. c. 77, s. 30, *post*, p. 249.

(p) This section is repealed by 28 & 29 Vict. c. 83, s. 2, and other rules "for the manner of working locomotives on turnpike roads and highways," are given in s. 3 of that Act, *post*, p. 237.

*Exemption from Tolls of Waggon, &c., now exempt under any General or Local Act.*

10. All waggons, wains, carts, or carriages, as hereinbefore described, drawn by any locomotive, and loaded with any materials such as are now exempt from toll under the provisions of any general or local Act (*q*) shall be entitled to the same exemption as they would be if drawn by animal power.

11. *Limit of Speed of Locomotives on public Highways, &c. (r)*

*Provisions of General Acts relating to Turnpike Roads to apply to Locomotives.*

12. All the clauses and provisions of any general or local Acts relating to turnpike roads or highways (*s*) shall, so far as the same are not expressly altered or repealed by or are not inconsistent with the provisions of this Act, apply to all locomotives propelled by other than animal power, and to all waggons, wains, carts, and carriages of any other description drawn by such locomotive, and to the owners, drivers, and attendants thereof, in like manner as if drawn by animal power: provided always, that the weight of every locomotive, and the name of the owner or owners thereof, shall be conspicuously and legibly affixed thereon (*t*); and any owner not having affixed such weight and such

(*q*) As to the exemption of waggons, &c., carrying manure (other than lime), and materials for the repair of highways, or agricultural produce, see note (*k*) to 25 & 26 Vict. c. 61, s. 37, *ante*, p. 115. Lime is exempted from toll in certain cases by 4 Geo. IV., c. 16, s. 1, and 3 & 4 Vict. c. 51, and under 13 & 14 Vict. c. 79, s. 3, turnpike trustees may take off tolls on lime.

(*r*) This section is repealed by 28 & 29 Vict. c. 83, s. 2, and other provisions limiting the speed of locomotives are made by s. 4 of that Act, *post*, p. 238.

(*s*) For a list of the general Acts relating to turnpike roads now in force, see *post*, p. 257; for the general Acts relating to highways, see Glen's "Law of Highways."

(*t*) It is required by s. 7 of the Locomotives Act, 1865, *post*, p. 240, that the name and residence of the owner of every locomotive shall be affixed thereto in a conspicuous manner, under a penalty of £2.

By s. 76 of the Highway Act, 1835 (5 & 6 Wm. IV., c. 50), "the

name shall, upon conviction thereof before two justices, forfeit any sum not exceeding five pounds; and any owner who shall fraudulently affix thereon any incorrect weight shall, upon conviction thereof, forfeit any sum not exceeding ten pounds.

*Right of Action in case of Nuisance.*

13. Nothing in this Act contained shall authorize any person to use upon a highway a locomotive engine which shall be so constructed or used as to cause a public or private nuisance; and every such person so using such engine shall, notwithstanding this Act, be liable to an indictment or action, as the case may be, for such use, where, but for the passing of this Act, such indictment or action could be maintained. (u)

*Short Title.*

14. This Act may be cited as the "Locomotive Act, 1861." (v)

15. *Extent of Act.* (w)

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owner of every waggon, cart, or other such carriage shall paint or cause to be painted in one or more straight line or lines, upon some conspicuous part of the right or off-side of his waggon, cart, or other such carriage, or upon the off-side shafts thereof, before the same shall be used on any highway, his christian name and surname, or the style and title by which he is commonly designated, and the place of his trade or abode, or the christian and surname, and place of trade or abode of a partner or owner thereof, at full length, in large legible letters, white upon black, or black upon white, not less than one inch in height, and continue the same thereupon so long as such waggon, cart, or other such carriage shall be used upon any highway," under a penalty not exceeding forty shillings; and by s. 15 of the General Turnpike Act (4 Geo. IV., c. 95), a similiar provision is made with respect to turnpike roads.

(u) A provision, similiar in effect, is contained in 28 & 29 Vict. c. 83, s. 12, *post*, p. 243; see also the note to that section.

(v) It is incorporated with the Locomotives Act, 1865, and amended by the Highways and Locomotives (Amendment) Act, 1878, *post*.

(w) This section, which applied the Act to Great Britain only, is repealed by 28 & 29 Vict. c. 83, s. 2, *post*, p. 237, and both Acts now extend to Ireland as well as to Great Britain. The Amending Act of 1878 (41 & 42 Vict. c. 77), however, applies only to England and Wales.

## THE LOCOMOTIVES ACT, 1865.

28 & 29 VICT. CAP. 83.

AN ACT FOR FURTHER REGULATING THE USE OF LOCOMOTIVES  
ON TURNPIKE AND OTHER ROADS FOR AGRICULTURAL AND  
OTHER PURPOSES. [5TH JULY 1865.]

WHEREAS by the "Locomotive Act, 1861," certain provision was made for regulating the use of locomotives on turnpike and other roads, and it is expedient that further and fuller provision should be made for that object: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:—

### *Commencement of Act.*

1. This Act shall not come into operation till the first day of *September* one thousand eight hundred and sixty-five, which day is hereinafter referred to as the commencement of the Act, and shall cease and determine on the first of *September* one thousand eight hundred and sixty-seven. (a)

### *Certain Sections of 24 & 25 Vict. c. 70, repealed.*

2. After the commencement of this Act, and so long as the same shall continue in force, (b) the fifth, ninth,

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(a) The Act has from time to time been continued by various Acts of Parliament, the last of which, the Expiring Laws Continuance Act, 1878 (41 & 42 Vict. c. 70) continues it to the 31st December, 1879.

(b) See the preceding section and note.

eleventh, and fifteenth sections of the said recited Act, and all orders made in pursuance of the said fifth section, (c) are hereby repealed.

*Rules for the Manner of working Locomotives on Turnpike Roads and Highways as herein stated.*

3. Every locomotive propelled by steam or any other than animal power on any turnpike road or public highway shall be worked according to the following rules and regulations : (d) viz.,

Firstly, at least three persons shall be employed to drive or conduct such locomotive, and if more than two waggons or carriages be attached thereto, an additional person shall be employed, who shall take charge of such waggons or carriages :

*Secondly, one of such persons, while any locomotive is in motion, shall precede such locomotive on foot by not less than sixty yards, and shall carry a red flag constantly displayed, and shall warn the riders and drivers of horses of the approach of such locomotives, and shall signal the driver thereof when it shall be necessary to stop, and shall assist horses, and carriages drawn by horses, passing the same.* (e)

Thirdly, the drivers of such locomotives shall give as much space as possible for the passing of other traffic :

Fourthly, the whistle of such locomotive shall not be sounded for any purpose whatever : nor shall the

(c) See note (k), *ante*, p. 231.

(d) Byelaws for regulating the use of locomotives upon highways, for preventing the use of them on bridges in certain cases, and for determining the hours during which they are not to pass along highways, may be made by the Corporation of the City of London, the Metropolitan Board of Works, the council of any borough having a separate Court of Quarter Sessions, and the county authority of any county, under 41 & 42 Vict. c. 77, s. 31, *post*, p. 250 ; a county authority may also make byelaws under s. 32 of the same Act requiring locomotives to be licensed, and byelaws under s. 26, *ante*, p. 212, for regulating the use of waggons, &c., drawn by animal power.

(e) This paragraph is repealed, so far as relates to England, by 41 & 42 Vict. c. 77, s. 29, *post*, and the following is substituted for it : " Secondly, one of such persons, while the locomotive is in motion, shall precede by at least twenty yards the locomotive on foot, and shall in case of need assist horses, and carriages drawn by horses, passing the same."

cylinder taps be opened within sight of any person riding, driving, leading or in charge of a horse upon the road; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety valve, so that no steam shall blow off when the locomotive is upon the road:

Fifthly, every such locomotive shall be instantly stopped on the person preceding the same, or any other person with a horse or carriage drawn by a horse, putting up his hand as a signal to require such locomotive to be stopped:

Sixthly, any person in charge of any such locomotive shall provide two efficient lights, to be affixed conspicuously, one at each side on the front of the same, between the hours of one hour after sunset and one hour before sunrise. (*f*)

*Penalty on Non-compliance with Rules.*

In the event of a non-compliance with any of the provisions of this section, the owner of the locomotive shall, on summary conviction thereof before two justices, be liable to a penalty not exceeding ten pounds; but it shall be lawful for such owner on proving that he has incurred such penalty by reason of the negligence or wilful default of any person in charge of or in attendance on such locomotive, to recover summarily from such person the whole or any part of the penalty he may have incurred as owner.

*Limit of speed of Locomotives on Turnpike Roads and Highways.*

4. Subject and without prejudice to the regulations hereinafter authorized to be made by local authorities (*g*) it shall not be lawful to drive any such locomotive along

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(*f*) The hours during which locomotives may be used on highways may be limited by byelaws made under 41 & 42 Vict. c. 77, s. 31, *post*, p. 250.

(*g*) Section 8, *post*, which authorized the making of the regulations here-mentioned is now repealed by 41 & 42 Vict. c. 77, s. 31, and in lieu thereof power is given to certain authorities to make byelaws as to the use of locomotives within their respective jurisdictions.



any turnpike road or public highway at a greater speed than four miles an hour, or through any city, town, or village at a greater speed than two miles an hour; and any person acting contrary thereto shall for every such offence, on summary conviction thereof, forfeit any sum not exceeding ten pounds.

*Size and weight of Locomotives which may be used. (h)*

5. *Subject to the provisions of this Act, any locomotive which shall not exceed nine feet in width or fourteen tons in weight may be used on any turnpike road or public highway, provided that the wheels of such locomotive be constructed according to the requirements of the said recited Act; and no locomotive exceeding nine feet in width or fourteen tons in weight shall be used on any such road, except subject to the provisions contained in the third section of the said Act as to the use of locomotives exceeding seven feet in width and twelve tons in weight. (h)*

*Restrictions as to the Use of Steam-Engines within 25 Yards of Roads not to apply to Locomotives used for ploughing purposes.*

6. Any provisions in any Act contained prohibiting, under penalty, the erection and use of any steam-engine, gin, or other like machine, or any machinery attached thereto within the distance of twenty-five yards from any part of any turnpike road, highway, carriageway, or cartway, unless such steam-engine, gin, or other like engine or machinery be within some house or other building, or behind some wall, fence, or screen sufficient to conceal or screen the same from such turnpike road, highway, carriageway, or cartway, (i) shall not extend to prohibit the use of

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(h) This section is repealed by 41 & 42 Vict. c. 77, s. 28, so far as relates to England, and in lieu thereof other regulations are enacted with respect to the weight of locomotives and the construction of their wheels.

(i) By s. 70 of the Highway Act, 1835 (5 & 6 Wm. IV. c. 50), it is enacted that "from and after the commencement of this Act it shall not be lawful for any person to sink any pit or shaft, or to erect or cause to be erected any steam-engine, gin, or other like machine, or any machinery attached thereto, within the distance of twenty-five yards, nor any wind-mill within fifty yards, from any part of any

any locomotive steam-engine for the purpose of ploughing within such distance of any such turnpike road, highway, carriageway, or cartway, provided a person shall be stationed in the road, and employed to signal the driver when it shall be necessary to stop, and to assist horses, and carriages drawn by horses, passing the same, and provided the driver of the engine do stop in proper time.

*Name and Residence of Owner to be affixed to Locomotives.*

7. The name and residence of the owner of every locomotive shall be affixed thereto in a conspicuous manner. If it is not so affixed the owner shall, on summary conviction, be liable to a penalty not exceeding two pounds. (j)

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carriageway or cartway, unless such pit or shaft, or steam-engine, gin, or other like engine or machinery, shall be within some house or other building, or behind some wall or fence, sufficient to conceal or screen the same from the said carriageway or cartway, so that the same may not be dangerous to passengers, horses, or cattle; nor shall it be lawful for any person to make or cause to be made any fire for calcining or burning of ironstone, limestone, bricks, or clay, or the making of coles, within the distance of fifteen yards from any part of the said carriageway or cartway, unless the same shall be within some house or other building, or behind some wall or fence, sufficient to screen the same from the same carriageway or cartway as aforesaid; and in case any person shall offend in any of the cases aforesaid, every such person so offending shall forfeit and pay any sum not exceeding five pounds for each and every day such pit, shaft, wind-mill, steam-engine, gin, machine, or fire shall be permitted to continue contrary to the provisions of this Act; which said penalties shall be levied, recovered, and applied in such and the same manner as any penalty or forfeiture for any other offence on any highway may be levied, recovered, and applied: provided, that nothing herein contained shall be construed to restrain any person or persons from using, repairing, rebuilding, or enlarging any wind-mill, steam-engine, gin, or other like machine, or any kiln or other erection used for the purpose of calcining or burning of ironstone, limestone, bricks, or clay, or the making of coles, which may have been erected and may be in existence at the passing of this Act."

A similar prohibition as to steam-engines, &c., near turnpike roads is contained in 27 & 28 Vict. c. 75, s. 1.

(j) The 24 & 25 Vict. c. 70, s. 12, requires that the weight of every locomotive, and the name of the owner or owners shall be conspicuously and legibly affixed thereon, under a penalty of £5. The name and residence of the owner must be painted on every waggon, &c., under 5 & 6 Wm. IV. c. 50, s. 76, and a similar provision is contained in the General Turnpike Act, 4 Geo. IV. c. 95, s. 15.

*Power to Local Authorities to make orders as to Hours, &c., Locomotives may pass through Cities, &c. Penalty on acting contrary to such Orders.*

8. *The following local authorities, (that is to say,)*

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5. *In any borough or town in Scotland the population of which shall have exceeded ten thousand at the last census, within the jurisdiction of a town council, the town council, and in any such town in Scotland not within the jurisdiction of a town council, but subject to the jurisdiction of police commissioners, or of trustees exercising under any public or private Act of Parliament the functions of police commissioners, the police commissioners, or, where there are no police commissioners, then the trustees, —may make orders as to the hours during which (and as to the speed, not in any case to exceed two miles an hour, at which) locomotives are to pass through the city or place subject to their respective jurisdictions; and any person in charge of a locomotive acting contrary to such regulations shall, on summary conviction be liable to a penalty not exceeding ten pounds:*

*Every order made in pursuance of this section shall be reduced into writing, and shall have affixed thereto the common seal, of the local authority, where they have a common seal, and shall be signed by the members of the local authority, or any two of them, where they have not a common seal:*

*A copy of such order shall be affixed to some public place within the jurisdiction of the local authority, and advertised*

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(k) This section is repealed, so far as relates to England, by 41 & 42 Vict. c. 77, s. 31, *post*, p. 250, and in lieu thereof power is given to the Corporation in the City of London, the Metropolitan Board of Works in the Metropolis, the town council in any borough having a separate court of quarter sessions, and the county authority in other places, to make byelaws as to the hours during which locomotives are not to pass over roads, and for regulating the use of locomotives on roads, and preventing their use on unsafe bridges. Power is further given to county authorities by s. 32 of the same Act to make byelaws requiring locomotives to be licensed. County authorities may also make byelaws under s. 26 of the Act for regulating the use of waggons, &c., drawn by animal power, to which the Locomotive Acts do not apply.

*in some newspaper circulating within the jurisdiction of the local authority, and the production of a newspaper containing such advertisement shall be evidence of the copy having been advertised in pursuance of this Act.*

*In Ireland the County Surveyor to be deemed the Conservator of the Roads in his County, and Proceedings for Damages to be taken in his Name. (l)*

9. *For the purposes of this Act, the county surveyor of each county in Ireland shall be deemed to be the conservator of all the roads in the county of which he is surveyor, made or repaired by grand jury presentment; and it shall not be lawful to use any locomotive, other than those specially authorized by this Act, on any such road in any county in Ireland, without the consent in writing of the county surveyor thereof, approved of by one or more justices sitting at petty sessions; and all compensation for damage done by any locomotive to any bridge, gullet, or arch, or any of the walls, buttresses, or supports thereof, on any such road in any county in Ireland, shall be recoverable in the name of the county surveyor thereof, for and on behalf of the county, from the party liable to pay the same, such compensation, if not exceeding ten pounds, to be recovered in a summary way by summons at petty sessions, and if over ten pounds to be recovered by process in the Civil Bill Court.*

*How penalties to be recovered and applied in Ireland. (l)*

10. *Every penalty imposed by the provisions of this Act shall in Ireland, be recoverable before a justice or justices of the peace in petty sessions, subject and according to the provisions of "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same, and shall be applied according to the provisions of "The Fines (Ireland) Act, 1851," and any Act amending the same.*

*Sect. 41 of 25 & 26 Vict. c. 93, not to be affected.*

11. *Nothing in this Act contained shall repeal, alter, or*

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*(l) As ss. 9 & 10 apply to Ireland only they are printed in italics in the same manner as the clauses which are repealed only so far as they relate to England.*

in any way affect the provisions of the forty-first section of "the *Thames Embankment Act, 1862.*" (m)

*Saving as to Actions at Law.*

12. Nothing in this Act contained shall authorize any person to use a locomotive which may be so constructed or used as to be a public nuisance at common law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of a locomotive. (n)

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(m) The section here mentioned enacts that "it shall not be lawful for any person to use a locomotive-engine propelled by steam along the streets or roadways constructed under the provisions of this Act."

(n) A similar provision to this is contained in s. 13 of the Act of 1861, *ante*, p. 235.

In connexion with the recovery of damages in respect of injury caused by the use of locomotives, the following case may be here cited :—

The defendant was the owner of a steam-plough, which travelled about the country drawn by a steam-engine, and which also had attached to it a house-van. The van and plough were left for the night on the grassy side of a highway, four or five feet from the metalled part of the road, no attempt having been made to take them into the adjoining field, because the persons in charge considered that it would be impossible so to remove them on account of the slippery state of the ground. During the evening, the plaintiffs' testator drove his mare in a cart along the metalled road. The mare was a kicker, but he was not aware of her vice. Passing the van, the mare shied, and galloped for 140 yards, then fell and kicked the driver, from the effects of which kick he ultimately died. In an action under Lord Campbell's Act (9 & 10 Vict. c. 93, s. 1), by his executors for wrongful and negligent obstruction of the highway, the jury found as follows, viz. : That the van was left where it stood unreasonably, and, "considering that no effort had been made to place it in the field," negligently, that there was some appreciable danger in leaving it standing where it did to vehicles passing along the metalled part of the road, that the death of the deceased was occasioned by the van so standing, and by the inherent vice of the mare combined, but not by accident or negligence of the deceased in his management of the mare, and that there was no contributory negligence in the deceased. Upon these findings it was held that the verdict and judgment must be for the plaintiff; for the unauthorised, unreasonable, and dangerous user of the highway by the defendant was the proximate cause of the injury.—*Harris v. Mobbs*, L. R. 3 Ex. D. 268; 39 L. T. (N. S.) 164.

With regard to the liability of the owner of a locomotive for damage

*Short Title.*

13. This Act may be cited as "The Locomotives Act, 1865;" and "The Locomotives Act, 1861," (o) and this Act, shall be construed together as one Act.

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by fire caused by sparks emitted from the engine, reference may be made to the case of *Jones v. Festiniog Railway Co.* (L. R. 3 Q. B. 783; 37 L. J. Q. B. 214; 18 L. T. (N.S.) 902), in which it was held that in order to exempt the company from liability in such a case where actual negligence does not exist, there must be express legislative authority to use locomotive engines, and that it is not sufficient that their use is not forbidden by statute. So in a recent case at *nisi prius*, where a fire was caused by sparks from a properly constructed traction engine, worked in a proper manner and without negligence, the verdict was entered for the plaintiffs, who had brought their action to recover from the owner of the engine the amount paid by them to the owner of a hayrick which had been burnt; *Royal Farmers' Insurance Co. v. Fall*.—*Times*, January 18, 1879.

(o) "The Locomotive Act, 1861," not "The Locomotives Act, 1861," is the short title given by 24 & 25 Vict. c. 70, s. 14, *ante*, p. 235; and in the 41 & 42 Vict. c. 77, s. 28, both are called "Locomotive" Acts.

## THE HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878.

41 & 42 VICT. CAP. 77.

AN ACT TO AMEND THE LAW RELATING TO HIGHWAYS IN ENGLAND AND THE ACTS RELATING TO LOCOMOTIVES ON ROADS; AND FOR OTHER PURPOSES. [16th AUGUST 1878.]

WHEREAS it is expedient to amend the law relating to highways in England, and to amend the Locomotive Acts, 1861 and 1865:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PRELIMINARY.

#### *Short Title.*

1. This Act may be cited as the Highways and Locomotives (Amendment) Act, 1878.

#### *Application of Act.*

2. This Act shall not apply to Scotland or Ireland. (a)

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(b)

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(a) The Locomotive Act, 1861, originally extended to Great Britain only, but the section (15) so limiting it was repealed by the Locomotives Act, 1865, s. 2, and the two Acts therefore now apply to Great Britain and Ireland. The present Act, however, extends only to England and Wales, and it must therefore be understood that the law relating to locomotives in Scotland and Ireland is not affected by the amendments contained in it. Wales is included in the term "England" by 20 Geo. II. c. 42, s. 3.

(b) The remainder of this section does apply to the part of the Act which deals with locomotives.

## PART I.

### AMENDMENT OF HIGHWAY LAW.

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(c)

## PART II.

### AMENDMENT OF LOCOMOTIVE ACTS, 1861 AND 1865.

#### *Weight of locomotives and construction of wheels.*

28. Section three of the Locomotive Act, 1861, and section five of the Locomotive Act, 1865, are hereby repealed, so far as relates to England, and in lieu thereof be it enacted that it shall not be lawful to use on any turnpike road or highway a locomotive (d) constructed otherwise than in accordance with the following provisions; (that is to say,)

- (1.) A locomotive not drawing any carriage, and not exceeding in weight three tons, shall have the tires of the wheels thereof not less than three inches in width, with an additional inch for every ton or fraction of a ton above the first three tons; (e) and
- (2.) A locomotive drawing any waggon or carriage shall have the tires of the driving wheels thereof not less than two inches in width for every ton in weight of the locomotive, unless the diameter of such wheels shall exceed five feet, when the width of the tires may be reduced in the same proportion as the diameter of the wheels is increased, but in such case the width of such

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(c) Part I. of the Act, being an Amendment of Highway Law only, is omitted here. It will be found at pp. 181-215, *ante*.

(d) A "locomotive" is defined by s. 38, *post*, as a locomotive propelled by steam, or by other than animal power.

(e) This paragraph is to the same effect as part of the repealed section (3) of the Locomotive Act, 1861.



- tires shall not be less than fourteen inches; (*f*) and
- (3.) A locomotive shall not exceed nine feet in width or fourteen tons in weight, except as hereafter provided; (*g*) and
  - (4.) The driving wheels of a locomotive shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than three inches in width nor more than three quarters of an inch in thickness, extending the full breadth of the tire, and the space intervening between each such cross-bar shall not exceed three inches (*h*)

(*f*) The 24 & 25 Vict. c. 70, s. 3, simply required that the tires should in no case be less than nine inches in width, and it will be seen from the last proviso to the present section that if a locomotive was constructed in accordance with that requirement before the passing of this Act, it may still be used, although it does not comply with the new requirements.

(*g*) Under the Act of 1861, the limit of the width was seven feet, and of the weight twelve tons, except in cases where express permission to use a broader or heavier locomotive was granted, in the City of London by the Lord Mayor, or elsewhere by the highway authority, and also, in the case of a parish under a surveyor of highways, by the justices at petty sessions. The limits of width and weight were, however, increased to those allowed by the present Act, by s. 5 of the Act of 1865.

The exception in this paragraph refers to the first proviso to the section.

(*h*) As to the meaning of "cylindrical wheels," see 3 Geo. IV. c. 126, s. 9, *ante*, p. 226.

Sec. 3 of the Act of 1861 required that the wheels should be "cylindrical and smooth-soled, or used with shoes or other bearing surface of a width not less than nine inches." And on the construction of those words the following decisions have been given:—

A locomotive engine was used on a turnpike road, the tires of the hind wheels of which were eighteen inches wide and had bars, known by the name of shoes, bolted obliquely across them. These bars were four and a half inches broad, and were placed three inches apart. It was contended before the justices that each shoe must have a continuous bearing width of nine inches, and on the other hand that the wheels had a bearing surface of more than nine inches, taking the measurement across the wheels, as it was shown that never less than nine inches, either of one shoe or of two shoes taken together, was bearing on the ground at one time. The justices having convicted the owner of the locomotive, the conviction was affirmed by the Exchequer Division of the High Court of Justice. *Stringer v. Sykes*, L. R. 2 Ex. D. 240; 46 L. J. M. C. 137; 36 L. T. (N. S.) 152.

The owner of any locomotive used contrary to the foregoing provisions shall for every such offence be liable to a fine not exceeding five pounds: Provided that the mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, (i) may, on the application of the owner of any locomotive exceeding nine feet in width or fourteen tons in weight, authorize such locomotive to be used on any turnpike road or highway within the areas respectively above mentioned, or part of any such road or highway, under such conditions (if any) as to them may appear desirable. (j) Provided also, that the owner of a locomotive used contrary to the provisions of sub-section two of this section shall not be deemed guilty of an offence under this section if he proves to the satisfaction of the court having cognizance of the case that such locomotive was constructed before the passing of this Act,

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In a later case the tires were also eighteen inches in width, but upon them were strips or shoes nine and three-quarter inches in width, measured across the tire parallel to the axis of the wheels, three inches broad and one inch thick. These shoes were placed alternately on each edge of the tire, and in the centre they touched and over-lapped one another by about one inch and a quarter, so that there was always a bearing surface of at least nine inches in one continuous width on the road. The owners of the engine were convicted by the justices, and on a case stated it was held that the shoes or bearing surfaces must be uniform, continuous, unbroken (save in so far as the joints of the material used might render perfect continuity impossible), smooth-surfaced bands of the width of nine inches at least round the whole circumference of the wheels; and the conviction was affirmed. It was also suggested by the court that a deviation of a quarter of an inch only from a flat surface, such as the 4 Geo. IV., c. 95, s. 2, allows for the projection of the nails of the tires on wheels of waggons, &c., used on turnpike roads, might not be permitted under the Locomotive Act. *Body v. Jeffrey*, L. R. 3 Ex. D. 95; 47 L. J. M. C. 69.

(i) The "county authority" are the justices of the county in general or quarter sessions assembled; s. 38, *post*.

(j) Under the Act of 1861, s. 3, this permission was to be given, in the City of London, by the Lord Mayor, and in other places in England by the corporation, commissioners, trustees and surveyors, or other persons having the charge of the roads, though, in the case of a surveyor or surveyors of highways, the further approval of the justices at petty sessions was necessary.

and that the tires of the wheels thereof are not less than nine inches in width. (*k*)

*Amendment of 28 & 29 Vict. c. 83, s. 3.*

29. The paragraph numbered "secondly" of section three of the Locomotive Act, 1865, is hereby repealed, so far as relates to England, and in lieu thereof the following paragraph is hereby substituted; namely,

"Secondly, one of such persons, while the locomotive is in motion, shall precede by at least twenty yards the locomotive on foot, and shall in case of need assist horses, and carriages drawn by horses, passing the same." (*l*)

*Steam locomotives to be constructed so as to consume their smoke.*

30. Section eight of the Locomotive Act, 1861, is hereby repealed, so far as relates to England; (*m*) and in lieu thereof, be it enacted that every locomotive used on any turnpike road or highway shall be constructed on the principle of consuming its own smoke; and any person using any locomotive not so constructed, or not consuming, so far as practicable, its own smoke, shall be liable to a fine not exceeding five pounds for every day during which such locomotive is used on any such turnpike road or highway.

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(*k*) See note (*f*), *ante*, p. 247.

(*l*) The red flag, which the attendant was required to carry by the repealed enactment, is now dispensed with, and he need only precede the locomotive by twenty yards instead of sixty, and is not expressly required to warn riders and drivers of horses of the approach of the locomotive, nor to signal the driver of the locomotive when it becomes necessary for him to stop it.

It should be observed, however, that the old provision is only repealed "so far as relates to England."

(*m*) The section here repealed, so far as relates to England, imposed the like penalty on any person using a locomotive not consuming its own smoke; the present enactment further imposes a penalty on a person using a locomotive which is not constructed on the principle of consuming its own smoke.

*Power to local authorities to make orders as to hours during which locomotives may pass over roads.*

31. Section eight of the Locomotive Act, 1865, is hereby repealed, so far as relates to England; (n) and in lieu thereof, be it enacted that the mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, (o) may make byelaws (p) as to the hours during which locomotives are not to pass over the turnpike roads or highways situate within the areas respectively above-mentioned, the hours being in all cases consecutive hours and no more than eight out of the twenty-four, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge where such authority is satisfied that such use would be attended with danger to the public; (q) and any person in charge of a locomotive acting contrary to such byelaws shall be liable to a fine not exceeding five pounds.

*Power of county authority to license locomotives.*

32. A county authority (r) may from time to time make,

(n) Under the repealed enactment (*ante*, p. 241), the local authorities there mentioned were authorized to make orders as to the hours during which, and the speed at which locomotives might pass through their districts. No limit was placed upon their discretion as to the hours to be fixed, but it was provided that the speed should not in any case exceed two miles an hour. Under the present enactment the prohibited hours are not to exceed eight out of the twenty-four, but no other limitation is placed on the byelaws which may be made for regulating the use of locomotives on highways.

(o) The "County authority" means the justices of a county in general or quarter sessions assembled, s. 38, *post*.

(p) The byelaws must be confirmed by the Local Government Board before they can be enforced, s. 35, *post*, p. 252. Offences against byelaws may be prosecuted summarily under s. 36, *post*.

(q) See also 24 & 25 Vict. c. 70, ss. 6, 7, (*ante*, pp. 231, 232), as to the use of locomotives over suspension and other bridges.

(r) The "County Authority" means the justices in general or quarter sessions assembled, s. 38 (*post*, p. 255). The section applies to Wales as well as to England.

altar, and repeal byelaws (s) for granting annual licenses to locomotives used within their county, and the fee (not exceeding ten pounds) to be paid in respect of each license; (t) and the owner of any locomotive for which a license is required under any byelaw so made who uses or permits the same to be used in contravention of any such byelaw shall be liable to a fine not exceeding forty shillings for every day on which the same is so used.

All fees received under this section shall be carried to and applied as part of the county rate.

This section shall not apply to any locomotive used solely for agricultural purposes. (u)

### *Duration of Part II. of Act.*

33. This part of this Act shall remain in force so long only as the Locomotive Act, 1865, continues in force. (v)

## PART III.

### PROCEDURE AND DEFINITIONS.

#### *34. Confirmation of Provisional Order. (w)*

(s) The byelaws must be confirmed by the Local Government Board before they can be enforced, see s. 35, *post*, p. 252. Offences against byelaws may be prosecuted summarily under s. 36, *post*.

(t) With reference to these fees the Local Government Board make the following suggestion in their circular letter of the 18th September, 1878, addressed to the Clerks of the Peace of Counties:—"In determining the fee to be paid it must be borne in mind that there will be many instances in which the same locomotive will be used in more than one county, and special provision will have to be made for these cases. This may perhaps be done by requiring the full fee, whatever may be the amount fixed, to be paid in the county where the license is taken out, the county officer obtaining from the other counties the necessary licenses afterwards, and paying over to them their proportion of the aggregate fee."

(u) "Locomotive" is defined by s. 38, *post*, to mean a locomotive propelled by steam or by other than animal power.

(v) The Locomotive Act, 1865, is at present continued to the 31st December, 1879, see 28 & 29 Vict. c. 83, s. 1, and note, *ante*, p. 236.

(w) Section 34 does not apply to the provisions of the Act relating to locomotives.

*Confirmation of Byelaws.*

35. A byelaw made under this Act (x) and any alteration made therein and any repeal of a byelaw, shall not be of any validity until it has been submitted to and confirmed by the Local Government Board.

A byelaw made under this Act shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district.

*Recovery of Penalties and Expenses.*

36. All offences, fines, and expenses under this Act, or any byelaw made in pursuance of this Act, may be prosecuted, enforced, and recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

The expression "the Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same. (y)

The expression "court of summary jurisdiction" means and includes any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts: Provided that the Court, when hearing and determining an information or complaint under this Act, shall be constituted either of two or more justices of the peace in petty sessions, sitting

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(x) Powers to make byelaws are given by ss. 31, 32, *ante*. See the instructions of the Local Government Board as to making byelaws in note (i) to s. 26, *ante*, p. 212.

(y) The 11 & 12 Vict. c. 43. is one of "Jervis' Acts;" see the third edition of those Acts by Mr. W. O. Glen.

at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace. (z)

*Form of Appeal to Quarter Sessions.*

37. If any party thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:—

- (1.) The appeal shall be made to the next practicable (d) court of quarter sessions for the county or place where the decision appealed from was given holden not less than twenty-one days after the decision of the court from which the appeal is made; (b) and
- (2.) The appellant shall, within ten days after the pronouncing by the court of the decision appealed from, give notice to the other party and to the court of summary jurisdiction of his intention to appeal and of the ground thereof; (c) such notice

(\*) As to the power of police and stipendiary magistrates to do alone any acts authorized to be done by more than one justice, see note (v) *ante*, p. 217.

(a) That is to say, the next sessions for which the appellant can give the requisite notice of appeal.

(b) The twenty-one days should be reckoned exclusively of the day on which the decision is given, and also of the day of holding the sessions, see *Reg. v. Salop* (8 A. & E. 173), which settled that an interval of a certain number of days, "at least" must be reckoned exclusively of both the days between which the interval is to elapse, and there does not seem to be any distinction between the expression, "not less than twenty-one days after," and "at least twenty-one days after."

(c) With regard to the notice of appeal, by 12 & 13 Vict. c. 45, s. 1, "in every case of appeal (except against a summary conviction, order of removal, order relating to a pauper lunatic, in a bastardy case, or under the revenue laws), to any court of general or quarter sessions of the peace, fourteen clear days' notice of appeal at least shall be given, and such shall be sufficient notice, any Act or Acts, or any rule or

- of appeal shall be in writing signed by the person or persons giving the same, or by his, her, or their solicitor on his, her, or their behalf; and
- (3.) The appellant shall, within three days after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow; and
  - (4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody:
  - (5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary

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practice of any court or courts, to the contrary notwithstanding; provided always that it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in such notice."

With regard to the statement of special cases by consent, by s. 11 of the same Act, "at any time after notice given of appeal to any court of general or quarter sessions of the peace against any judgment, order, rate, or other matter except an order in bastardy, or a proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post office), for which the remedy is by such appeal, it shall be lawful for the parties, by consent, or by order of any judge [of the High Court of Justice], to state the facts of the case in the form of a special case for the opinion of such superior court, and to agree that a judgment in conformity with the decision of such court, and for such costs as such court shall adjudge, may be entered on motion by either party, at the sessions next or next but one after such decision shall have been given; and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the court of general or quarter sessions, upon an appeal duly entered and continued."



jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

*Interpretation.*

38. In this Act—

“County” has the same meaning as it has in the Highway Acts, 1862 and 1864, (d) except that every liberty not being assessable to the county rate of the county or counties within which it is locally situate (e) shall, for the purposes of this Act other than those relating to the formation and alteration of highway districts, and the transfer of the powers of a highway board, be deemed to be a separate county :

“County authority” means the justices of a county in general or quarter sessions assembled :

“Borough” means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled “An Act to provide for the regulation of municipal corporations in England and Wales,” and the Acts amending the same :

\* \* \* \* \*

\* (f)

(d) By 25 & 26 Vict. c. 61, s. 2, the term “county” does not include “county of a city” or “county of a town,” but where a county is divided into ridings or other divisions, having a separate court of quarter sessions, it means each such division or riding, and not the entire county ; all liberties and franchises (except the liberty of St. Albans, which is to be considered a county, and boroughs under the Municipal Corporation Acts) are to be considered as forming part of the county by which they are surrounded, or if surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary. And by 27 & 28 Vict. c. 101, s. 3, the term includes any division of a county that has a separate county treasurer.

(e) Such as Peterborough, Ripon, the Isle of Ely, and the Cinque Ports.

(f) The definitions here omitted do not relate to the Second Part of the Act, amending the Locomotive Acts.

“The metropolis” means the parishes and places mentioned in the Schedules A, B, and C, annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by Order in Council in manner in the said Act provided; also the city of London and the liberties of the said city:

“Quarter sessions” includes general sessions:

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“(g) “Locomotive” means a locomotive propelled by steam or by other than animal power:

“Person” includes a body of persons corporate or unincorporate.

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(g) The definitions here omitted do not relate to the second part of the Act, amending the Locomotive Acts.

## PART III.

## TURNPIKE CONTINUANCE ACTS. (a)

26 &amp; 27 VICT. CAP. 94.

AN ACT TO AMEND THE LAW RELATING TO THE REPAIR OF  
TURNPIKE ROADS IN ENGLAND AND TO CONTINUE CERTAIN  
TURNPIKE ACTS IN GREAT BRITAIN. [28TH JULY, 1863.]

*For removing doubts as to Highway Boards established under  
25 & 26 Vict. c. 61, being liable to contribute to repair of  
turnpike roads, in pursuance of 4 & 5 Vict. c. 59, &c. As to  
term "Local Act."*

1. Whereas doubts are entertained whether Highway Boards established under the Act of the session of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter sixty-one, are liable to contribute to the repair of turnpike roads in pursuance of the Act of the session of the fourth and fifth years of the reign of her present Majesty, chapter fifty-nine, and the Acts continuing the same: Be it enacted, that where any turnpike road is

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(a) The following are the General Turnpike Acts, which are, or parts of which are, at present in force:—

3 Geo. IV. c. 126; 4 Geo. IV. c. 16; 4 Geo. IV. c. 95; 5 Geo. IV. c. 69, s. 1; 7 & 8 Geo. IV. c. 24; 9 Geo. IV. c. 77; 1 & 2 Wm. IV. c. 25; 2 & 3 Wm. IV. c. 124; 3 & 4 Wm. IV. c. 80; 4 & 5 Wm. IV. c. 81; 5 & 6 Wm. IV. c. 18; 2 & 3 Vict. c. 46; 3 & 4 Vict. c. 39; 3 & 4 Vict. c. 51; 4 & 5 Vict. c. 33; 4 & 5 Vict. c. 51; 7 & 8 Vict. c. 52, s. 3; 12 & 13 Vict. c. 87; 13 & 14 Vict. c. 38; 14 & 15 Vict. c. 38; 16 & 17 Vict. c. 135; 17 & 18 Vict. c. 58; 26 & 27 Vict. c. 94; 28 & 29 Vict. c. 107; 29 & 30 Vict. c. 105; 30 & 31 Vict. c. 121; 31 & 32 Vict. c. 99; 32 & 33 Vict. c. 90; 33 & 34 Vict. c. 73; 34 & 35 Vict. c. 115; 35 & 36 Vict. c. 85; 36 & 37 Vict. c. 90; 37 & 38 Vict. c. 95; 39 & 40 Vict. c. 39; 40 & 41 Vict. c. 64, s. 9; 41 & 42 Vict. c. 62.

The above Acts are at present continued by the Annual Turnpike Acts Continuance Act, 1878, s. 8 (*post*, p. 284), to the 1st November, 1879, and to the end of the then next session of Parliament.

situated in a parish that is included in a highway district, an order may be made on the Highway Board of the district to contribute to the repair of that road (b) under the same circumstances under which an order for the same purpose may be made on the parish surveyor in pursuance of the said Act of the session of the fourth and fifth years of the reign of Her present Majesty, chapter fifty-nine, as continued as aforesaid ; (c) and for the purposes of the said last-men-

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(b) By 35 & 36 Vict. c. 85, s. 14, *post*, p. 275, a Highway Board may voluntarily repair turnpike roads at the cost of the district fund.

(c) The provisions of the 4 & 5 Vict. c. 59, relating to the contributions here mentioned are as follows :—

Sec. 1 “It shall be lawful for the justices at any special sessions for the highways holden after the passing of this Act, upon information exhibited before them by the clerk or treasurer of any turnpike trust that the funds of the said trust are insufficient for the repairs of the turnpike roads within any parish, notice in writing of such intended information having been previously given on the part of such clerk or treasurer to the parish surveyor twenty-one days at least before such special sessions, to examine the state of the revenues and debts of such turnpike trusts, and to inquire into the state and condition of the repairs of the roads within the same, and also to ascertain the length of the roads, including turnpike roads, within such parish, and how much of such road is turnpike road, and if after such examination it shall appear to the said justices necessary or expedient for the purposes of any turnpike road, so to do, then to adjudge and order what portion, if any, of the rate or assessment levied or to be levied by virtue of the said recited Act (5 & 6 Wm. IV. c. 50) shall be paid by the said parish surveyor, and at what time or times, to the said commissioners or trustees or to their treasurer or other officers appointed by them on that behalf, such money to be wholly laid out in the actual repairs of such part of such turnpike road as lies within the parish from which it was received.”

Sec. 2. “If any such parish surveyor shall refuse or neglect to pay over such portion of the said rate or assessment at the time or times and in the manner mentioned in the order of the said justices, the same shall and may be levied upon the goods and chattels of such surveyor in such manner as penalties and forfeitures are by the said recited Act authorized to be levied.”

Sec. 3. “Provided always, and be it enacted, that if any person shall think himself aggrieved by any order, judgment, or determination made or by any matter or thing done by any justices of the peace at any such special sessions, in pursuance of this Act, such person shall be at liberty to make his complaint thereof by appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, riding, division, or place wherein the cause of such complaint shall arise, such appellant first giving to such justices ten days’ notice in writing of the grounds of such appeal, within six

tioned Act the Highway Board shall be deemed to be substituted for the parish surveyor, and any rate leviable in pursuance of a precept of the Board for the rate or assessment levied or to be levied by the said surveyor as in the said Act mentioned, *and any moneys paid by the Board for the purposes or in pursuance of the last mentioned Act, shall be deemed to be expenses incurred by the Board in respect of the repair of highways in the parish in which the turnpike road is situate for which contribution is required,* (d) and "parish" as used in this section shall mean any place in a highway district that

days after such order, judgment, or determination shall be so made or given as aforesaid, who are hereby required, within forty-eight hours after the receipt of such notice, to return all proceedings whatever had before them respectively touching the matter of such appeal to the said justices at the general or quarter sessions aforesaid; and that in case of such appeal the said justices at the said quarter sessions, upon due proof of such notice and statement having been given as aforesaid, shall hear and determine such appeal; and the said justices at the said quarter sessions shall have power to award such costs to the parties appealing or appealed against as they the said justices shall think proper, such costs to be levied and recovered in the same manner as any penalties or forfeitures are recoverable under the said recited Act; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form: Provided always, that in case there shall not be time to give such notice as aforesaid before the next sessions to be holden after such order, determination, or judgment, then and in every such case such appeal may be made to the justices at the next following sessions, who shall proceed to determine such appeal in manner aforesaid: Provided always, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid. . . ." The remainder of the section is repealed by the Statute Law Revision Act, 1874 (No. 2).

Sec. 4. "In construing this Act the word 'parish' shall be taken to mean and include parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct, chapelry, or other place or district maintaining its own highways."

Where an Act merely authorized the making of certain roads by turnpike trustees, the completion of the whole system was held not to be a condition precedent to the roads becoming highways, and a contribution order might be made under 4 & 5 Vict. c. 59, s. 1. *Semble*, that trustees for making ferries and roads connected therewith, being authorized to take tolls, were turnpike trustees within the meaning of the Act. *Reg. v. French*, L. R. 3 Q. B. D. 187; 38 L. T. (N.S.) 385.

(d) The words in italics are repealed by 34 & 35 Vict. c. 115, s. 15, and the expenses are now to be charged to the district fund.

returns a waywarden or waywardens to the Board of that district; and it is hereby declared that "local Act," as used in the seventh section of the said Act of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter sixty-one, does not include turnpike Acts.

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28 & 29 VICT. CAP. 107.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT  
BRITAIN. [5TH JULY, 1865.]

*Application of Secs. 118 & 124 of 3 Geo. IV. c. 126, to  
Turnpike Roads that have become ordinary Highways.*

2. The sections relating to encroachments on turnpike roads contained in the Act of the third year of King George the Fourth, chapter one hundred and twenty-six, and numbered respectively one hundred and eighteen and one hundred and twenty-four, (e) shall continue in

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(e) By 3 Geo. IV. c. 126, s. 118, "If any person shall make or cause to be made any dwelling-house or other building, or any hedge or other fence on or at the side of any turnpike road, in such manner as to reduce the breadth or confine the limits thereof, or shall fill up or obstruct any ditch at the side thereof, or shall make or cause to be made any dwelling-house or other building, or any hedge or other fence on any common or waste land on the side or sides of any turnpike road within the distance of thirty feet, if within three miles of any market town, or if beyond that distance, within twenty-five feet from the middle or centre thereof; or shall make any drain, gutter, sink or water-course across, or otherwise heap up or injure the surface of any turnpike road, or of any part thereof, or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands, shall turn his or their plough or harrow in or upon any land or ground within the distance aforesaid from the middle or centre of any turnpike road made or to be made, or make any other encroachment on any turnpike road within the distance aforesaid from the middle or centre thereof: every such person so offending shall forfeit for every such offence, forty shillings to such person as shall make information of the same; and it shall be lawful for the trustees or commissioners who have the care of any such road, to cause such dwelling-house or other building, hedge, ditch or fence, drain, sink, water-course, gutter or other encroachment, to be taken down or filled up, or where any ditch shall be filled up or obstructed, to be opened

force in relation to any road which, having been a turnpike road, may at any time after the passing of this Act become an ordinary highway, in the same manner as if such road had continued to be a turnpike road; and in the construction of the said section the Highway Board shall be deemed to be the trustees or commissioners where the road is within the jurisdiction of a Highway Board, and in other cases the surveyor, or other local authority having the care of the road, shall be deemed to be such trustees or commissioners.

### *Meetings of Trustees or Commissioners.*

3. It shall be the duty of the trustees or commissioners of a turnpike road that is about to become or has become

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and cleansed at the expense of the person or persons to whom the same shall belong; and it shall and may be lawful for any one or more justice or justices of the peace of the county where such offence shall be committed, upon proof thereof to him or them made upon oath, to levy, as well the expenses of taking down or filling up or cleansing such dwelling-house or other building, hedges, ditches, drains or other encroachments as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, rendering the overplus (if any) to the owner on demand."

By s. 124 of the same Act, "Whereas doubts may arise as to what is to be deemed the road, or the centre of the road: be it therefore enacted, that where, in this or any other Act of Parliament relating to turnpike roads, any matter or thing is directed or forbidden to be done within a certain distance of the centre of the road, that portion of ground shall be deemed and taken to be the road which has been maintained by the justices or commissioners as a road, and repaired with stones, gravel, or other materials used in forming roads, for six months immediately preceding any offence committed against such regulations; and the centre of the road shall be the middle of such hard road, where a line being drawn along the road or a point marked, an equal number of feet of hard road which have been so maintained and repaired as aforesaid for six months, shall be found on each side of such line or mark: Provided always, that nothing herein contained shall authorize any person or persons to enclose or make any encroachment on any waste lands or grounds lying on the side of any turnpike road, being part of the highway, and over which the king's subjects have been used and accustomed to pass; but every person who shall enclose such waste lands and grounds, or obstruct the right of passage over the same, shall continue and be subject to the same process and penalties as if this Act had not been made."

See also 27 & 28 Vict. c. 101, s. 51, *ante*, p. 171, with regard to encroachments on highways.

an ordinary highway to hold such meetings as may be necessary for the complete winding up of the affairs of their trust or commission, (*f*) and any such meeting shall be legal if held at any time within two months after the time limited for the expiration of their trust or commission. (*g*)

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29 & 30 VICT. CAP. 105.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, AND TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS. [10TH AUGUST, 1866.]

*Amendment of Provisions of 4 Geo. IV. c. 95, s. 57, respecting Toll-houses which have become useless.*

2. Whereas by the provisions of an Act of the fourth year of the reign of his late Majesty King George the Fourth, chapter ninety-five, (*h*) the trustees or commissioners of a turnpike road are prohibited from selling toll-houses not required for the purposes of the road, and

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(*f*) Where the powers of turnpike trustees have expired before the affairs of their trust are completely wound up, the Local Government Board may appoint a person to complete the winding up, see 39 & 40 Vict. c. 39, s. 9, *post*, p. 283.

(*g*) See 34 & 35 Vict. c. 115, s. 18, *post*, which amends this enactment.

(*h*) By s. 57 of the 4 Geo. IV. c. 95, it is enacted that "where any toll-house or toll-houses standing on or adjoining any turnpike road, and which shall have been erected by or vested in the trustees or commissioners of such road, shall become useless and be no longer required for the purposes of such road, it shall not be lawful for the trustees or commissioners of such road to sell or dispose of such toll-house or toll-houses; but in every such case the trustees or commissioners of the road, on which such toll-house or toll-houses no longer required shall stand, shall cause such toll-house or toll-houses, with the outhouses attached or belonging thereto, to be pulled down, and the materials thereof to be sold or removed; and the site of such toll-house or toll-houses so pulled down, together with the gardens and appurtenances thereunto belonging, may then be sold by the said trustees or commissioners, in the same manner as and under the regulations in the said recited Act (3 Geo. IV. c. 126) and this Act contained with respect to any land or ground not wanted for the purposes of the road."



are bound to pull the same down, and to sell the materials thereof: And whereas it is expedient to amend the said provisions: Be it enacted as follows:—

(1.) If the road would be improved by the addition thereto of the whole or any part of the site of the toll-house, or of any garden or land belonging thereto, then the trustees or commissioners of the road shall, instead of selling the whole or such part (as the case may require), cause the same to be added to the road, and shall cause any building standing on the ground so added to be pulled down, and the materials thereof to be sold and removed: (i)

(2.) Where the trustees or commissioners of a turnpike road are authorized to sell the site of a toll-house, they may, notwithstanding anything contained in the last-mentioned Act, sell the toll-house and other buildings standing on such site, unless required to pull them down by the person to whom a right of pre-emption is given by any Acts relating to turnpike roads. Subject as aforesaid, the provisions of the said Act relating to the selling of toll-houses shall be of the same force as if this Act had not passed. (j)

### 30 & 31 VICT. CAP. 121.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS.  
[20TH AUGUST, 1867.]

*As to Trustees of Turnpike Road holding Shares in Companies which contract to supply Gas, &c., to Roads.*

2. No trustee or commissioner of any turnpike road shall be liable to any penalty or forfeiture by reason of his being

(i) The turnpike trustees have a practical discretion under this section, and in a case where the price of the toll-house was far beyond the value of the improvement, they were justified in selling it instead of adding the site to the road. Query, whether the Court had jurisdiction to review the propriety of the sale. *Reg. v. Fox*, 35 L. T. (N.S.) 249.

(j) Amended by 34 & 35 Vict. c. 115, s. 17, *post*, p. 271.

a proprietor or holder of a share in any gas company or water company which contracts with the trustees or commissioners of such turnpike road for the supply of gas or water for the purposes of such road, or of the toll-houses thereon.

*On expiration of Trust Balance to be paid to Parishes.*

3. The trustees or commissioners of a turnpike road which shall hereafter become an ordinary highway shall, as soon as may be after the expiration of their trust, distribute the balance of any moneys remaining in their hands amongst the parishes upon which will fall the liability to repair the roads of such trust in proportion to the mileage of such roads in each parish, or, if such road shall be situated in any highway district or highway districts, then the trustees shall pay over such balance to the treasurer or treasurers of such highway district or highway districts in proportion to the mileage of such road in each such highway district, *to be distributed in manner aforesaid.* (k)

*Provision as to Drivers of Carts, &c., riding on Carriages on Turnpike Roads.*

4. From and after the passing of this Act, no driver of any waggon or cart of any kind shall be liable to any penalty for riding upon such carriage in any turnpike road, provided such driver shall not ride upon the shafts of such carriage, but shall carefully drive such carriage by means of reins held in his hands, such reins being attached to every horse drawing the same. (l)

*Ratepayers to have access to Accounts of Trust where Repairs borne by Parish.*

5. Where the repairs of a turnpike road shall be thrown wholly or partly on a parish, any ratepayer of that parish

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(k) Amended by the 31 & 32 Vict. c. 99, s. 8, *post*, and 34 & 35 Vict. c. 115, s. 16.

The words in *italics* are repealed by 34 & 35 Vict. c. 115, s. 16, *post*, p. 271.

(l) See also s. 78 of the Highway Act, 1835, and s. 28 of the Towns Police Clauses Act, 1847.

shall, on payment of one shilling to the clerk of the trust, and on any day within twenty-one days of the general annual meeting of the commissioners of such trust, have access, between the hours of ten of the clock in the morning and two of the clock in the afternoon, to the accounts of such trust, and shall be empowered to examine and take a copy of the accounts.

*Provision for Audit of Accounts in cases herein named.*

6. Where at any general annual meeting of the trustees of a turnpike road three or more trustees shall state in writing their desire that there should be an audit other than the audit by the trustees themselves of the accounts of such trust, the clerk of such trust shall apply to the principal Secretary of State for the Home Department (*m*) for an audit of the accounts of that year, and the Secretary of State for the Home Department (*o*) shall direct an audit accordingly, and shall make such regulations for holding such audit as shall seem to him desirable: Provided always, that the expenses of, or incident to such audit shall be deemed expenses incurred by the trustees of the turnpike road.

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31 & 32 VICT. CAP. 99.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS. [31ST JULY, 1868.]

*Extension of the operation of the Act of 12 & 13 Vict. c. 46.*

6. Whereas provision is made by the Act of the session of the twelfth and thirteenth years of the reign of Her present Majesty for the union of turnpike trusts in cases where the general annual meetings of the trustees of two

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(*m*) Now the Local Government Board, see 38 & 39 Vict. c. 55, Sch. V, Part iii., *post*, p. 280.

or more turnpike roads have been held at the same place, or places distant not more than ten miles from each other : And whereas it is expedient to extend the operation of the said Act: Be it enacted, That the first section of the said Act shall be construed as if the word "twenty" were substituted therein for the word "ten."

*If Road in repair, Compensation may be given to Officers of expired Trust.*

7. Where a turnpike road shall have become an ordinary highway, then, upon a certificate being given by two justices that such road was at the time at which it became a highway in complete and effectual repair, the trustees or commissioners of such road, at any meeting held by them, in pursuance of the third section of "The Annual Turnpike Acts Continuance Act, 1865," may, out of any balances remaining in their hands after payment of all liabilities, award, if they see fit, to any person or persons whose offices expire with the trust, and who have held such offices for not less than ten years immediately preceding such meeting, such compensation as they may think just, not exceeding in any case the amount of three years salary. (n)

8. *Sect. 3 of 30 & 31 Vict. cap. 121 (o) to apply to Roads which previously became ordinary Highways. (p)*

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(n) See 33 & 34 Vict. 73, s. 13, *post*, p. 270, with regard to turnpike roads extending into two counties.

(o) *Ante*, p. 264.

(p) This section, which enacted that the third section of the Act of the session of the thirtieth and thirty-first years of Her present Majesty, chapter one hundred and twenty-one, should apply to all roads which, having been turnpike roads, had become ordinary highways previous to the passing of that Act, is repealed by the Statute Law Revision Act, 1875. See also 34 & 35 Vict. c. 115, s. 16, *post*, p. 271.

## 32 &amp; 33 VICT. CAP. 90.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT  
BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND  
TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS.  
[9TH AUGUST, 1869.]

*Explanation of 3 & 4 Wm. IV. c. 80.*

7. Whereas by an Act of the session of the third and fourth years of the reign of His late Majesty King William the Fourth, chapter eighty, intituled "An Act requiring the Annual Statements of Trustees or Commissioners of Turnpike Roads to be transmitted to the Secretary of State, and afterwards laid before Parliament," and the several enactments contained in previous Acts therein referred to, and by an Act of the Session of the twelfth and thirteenth years of the Reign of Her present Majesty, chapter eighty-seven, intituled "An Act to continue certain Turnpike Acts in Great Britain for limited periods, and to make certain provisions respecting Turnpike Roads in England," certain provisions are made in relation to the statements of accounts of turnpike trusts, and to enable one of Her Majesty's Principal Secretaries of State (g) to elucidate such statements and make abstracts thereof and prepare observations thereon to be laid before Parliament: And whereas divers Local Acts of Parliament relating to turnpike trusts have expired during the the last five years, and doubts have arisen whether the said Acts and the enactments therein referred to apply after the expiration of such Local Acts: Be it enacted, that where any Local Act of Parliament relating to any Turnpike Trust has expired within the period of five years preceding the date of the passing of this Act, or may hereafter expire, the said Acts of the sessions of the third and fourth years of the reign of His late Majesty William the Fourth, chapter eighty, and the twelfth and thirteenth years of the reign of Her present Majesty, chapter eighty-seven, and the enactments therein referred to, shall be deemed in the

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(g) Now the Local Government Board. See 38 & 39 Vict. c. 55, Sch. V, Part iii. *post*, p. 280.

same manner as if such Local Act had not expired, to apply in the case of such trust, and the officers thereof, until such information may have been furnished to the said Secretary of State (r) as will in his opinion enable him to elucidate the statement and make the abstract thereof and prepare his observations thereon, and to lay the same before Parliament as required by the said Acts or one of them. (s)

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### 33 & 34 VICT. CAP. 73.

1813  
AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS.  
[9TH AUGUST, 1870.]

#### *Maintenance of certain Highways.*

10. With regard to any highway which within seven years previous to the passing of this Act has ceased, or which hereafter may cease to be a turnpike road, the cost of maintaining so much thereof as passes through any highway district constituted under the "Highway Acts, 1862 and 1864," shall after the thirty-first day of December one thousand eight hundred and seventy or after the date of the said highway ceasing to be a turnpike road, whichever shall last happen, be a charge on the common fund of such highway district, and shall be annually provided for in the same manner as is enacted in the thirty-second section of the Highway Act, 1864, in respect to the salaries of the officers appointed for the district. (t)

*Stone, &c., to be raised within any Highway District.*

11. It shall be lawful for any surveyor of any highway

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(r) See note (q), p. 267.

(s) With regard to the times at which the statements and estimates referred to in the 3 & 4 Wm. IV. c. 80, and 12 & 13 Vict. c. 87, s. 6, are to be transmitted, see 41 & 42 Vict. c. 62, s. 9, *post*, p. 284.

(t) One half of the cost of maintenance of these roads is now payable out of the county rate under 41 & 42 Vict. c. 77, s. 13, *ante*, p. 199.

district to raise stone or other material within any highway district for the repair of any turnpike road which may be thrown upon any highway district by the preceding clause of this Bill, (*sic*) in the same manner and with the like powers, and on payment of such compensation for the same, as the trustees for a turnpike road are now empowered by law to do. (*u*).

*Bridges to become County Bridges.* 5 & 6 Wm. IV. c. 50.

12. Where a turnpike road shall have become an ordinary highway, all bridges which were previously repaired (*v*) by the trustees of such turnpike road shall become county bridges, and shall be kept in repair accordingly. (*w*)

Provided that for the purposes of this Act such bridges shall be treated as if they were bridges built subsequently to the passing of the Act of the fifth and sixth years of His late Majesty King William the Fourth, chapter fifty, intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England. (*x*)

(*u*) As to these powers, see 3 Geo. IV. c. 126, ss. 97, 98, 100, 102, 103; 4 Geo. IV. c. 95, ss. 56, 71; and 7 & 8 Geo. IV. c. 24, s. 15.

(*v*) The word "repaired" must here be taken to mean "repairable:" see *Reg. v. Somerset*, 38 L. T. (N.S.) 452.

(*w*) The repair of an addition which had been made to a county bridge without authority by turnpike trustees, and which had been repaired by them, devolved on the county on the determination of the turnpike trust.—*Reg. v. Buckinghamshire (Inhabitants)*, 42 J. P. 116.

(*x*) This proviso has reference to s. 21 of the Highway Act, 1835, by which it is enacted that "if any bridge shall hereafter be built, which bridge shall be liable by law to be repaired by and at the expense of any county or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road, who were by law before the erection of such bridge bound to repair the said highways. Provided nevertheless, that nothing herein contained shall extend or be construed to extend to exonerate or discharge any county or part of any county from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridge, or the land arches thereof."

*Turnpike Roads extending into Two Counties.*

13. Where a turnpike road extending into two or more counties shall become an ordinary highway, in lieu of the certificate required by the seventh section of "The Annual Turnpike Acts Continuance Act, 1868," (y) to be given by two justices before the trustees can award compensation to their officers, there shall be required a certificate by two justices of each county into which such turnpike road may extend, and each of such certificates shall certify that such part of the road as lies within the county for which the justices giving the certificate are acting, was, at the time at which it became an ordinary highway, in complete and effectual repair.

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34 & 35 VICT. CAP. 115.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS.  
[21ST AUGUST, 1871.]

*Contribution of Highway Board to the repair of a Turnpike Road to be charged to the District Fund.*

15. When, in accordance with the provisions of the Annual Turnpike Acts Continuance Act, 1863, (z) an order has been made on the Highway Board of a district to contribute to the repair of a turnpike road, any moneys paid by the Board in pursuance of such order shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly to the district fund. (a)

So much of the said Act as prescribes that such moneys shall be deemed expenses incurred by the Board in respect

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(y) See 31 & 32 Vict. c. 99, s. 7, *ante*, p. 266.

(z) See 26 & 27 Vict. c. 94, s. 1, *ante*, p. 257.

(a) Now, by 35 & 36 Vict. c. 85, s. 14, *post*, p. 275, Highway Boards may voluntarily repair turnpike roads at the cost of the district fund.



of the repair of the highways in the parish in which the turnpike road is situated for which such contribution is required is hereby repealed.

*Moneys paid from a Turnpike Trust on its expiration to the Treasurer of a Highway Board to go to District Fund, for the common use of District.*

16. Where, in accordance with the provisions of the Annual Turnpike Acts Continuance Act, 1867, (b) or the Annual Turnpike Acts Continuance Act, 1868, (c) the trustees or commissioners of a turnpike road which has become an ordinary highway pay any of the moneys remaining in their hands on the expiration of their trust to the treasurer of any highway district in which such road is situated, such moneys shall be placed to the credit of the district fund, for the common use or benefit of the several parishes within such district.

So much of the said Annual Turnpike Acts Continuance Act, 1867, as prescribes that such moneys, after having been paid to the treasurer of a highway district, shall be distributed amongst the parishes within such district in proportion to the mileage of such road in each parish, (b) is hereby repealed.

*On expiration of a Trust, Toll-houses, &c., not to be sold without consent of Highway Authority.*

17. The trustees or commissioners of a turnpike trust about to expire shall not sell any toll-house, or the site thereof, or any part of the site, or any part of any garden or land belonging thereto, without giving notice in writing not later than two months before the expiration of such trust (d) to the highway authority on which an order might under the provisions of the Act of the session of the

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(b) See 30 & 31 Vict. c. 121, s. 3, *ante*, p. 264.

(c) See 31 & 32 Vict. c. 99, s. 8, *ante*, p. 266.

(d) The notice may be given at any time within two years, and not later than two months before the expiration of the trust. See 38 & 39 Vict. c. cxciv., s. 9, *post*, p. 281.

fourth and fifth years of the reign of Her present Majesty, chapter fifty-nine or the Annual Turnpike Acts Continuance Act, 1863, be made for contribution to the repair of such road where it adjoins the said premises; and such authority, if of opinion that the road would be improved by the addition thereto of such premises or any part thereof, may, within one month of such notice, require the trustees or commissioners to make such improvement, and it shall be incumbent on such trustees or commissioners to give effect to such requisition.

Provided that if the trustees or commissioners feel aggrieved at such requisition they may appeal to the general or quarter sessions having jurisdiction in the place wherein such premises are situated, at the next court held not less than fifteen days after the receipt of such requisition.

The appellants shall, within seven days after receipt of such requisition, give a notice in writing to the highway authority of their intention to appeal.

The court may adjourn the appeal, and at the hearing thereof may make such order in the matter, and also such order as to costs, to be paid by either party, as the court thinks just.

No order made in pursuance of this section shall be quashed for want of form, or be removed by *certiorari* or otherwise into any superior court.

Any sale or agreement for any sale made with a view to evade the provisions of this section shall be void; provided that nothing herein contained shall invalidate any sale or contract for sale *bonâ fide* made before the passing of this Act.

*Extension of 28 & 29 Vict. c. 107, s. 3.*

18. It shall be lawful for one of Her Majesty's Principal Secretaries of State (*f*) from time to time, at his discretion, to prolong the period during which the trustees or commissioners of a turnpike road that is about to become or has become an ordinary highway may hold meetings

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(*f*) Now the Local Government Board. See 38 & 39 Vict. c. 55, Sch. V, Part iii., *post*, p. 280.

for the winding up of the affairs of their trust or commission. (g)

*Provision for Extinction of unclaimed Mortgage Debts.*

19. The trustees or commissioners of a turnpike trust about to expire shall publish a notice specifying a time within which claims in respect of any principal moneys or interest secured upon the revenues of such road may be sent in writing to the clerk of the trust.

Such notice shall be published once in the London daily *Times* newspaper, and twice (once in each of two successive weeks) in a newspaper usually circulated in the county or counties in which the road is situated. (h)

The first publication of such notice shall be made, as nearly as may be, two months before the expiration of the trust. (i)

The time so to be specified shall not be earlier than two or later than three months from the date of the first publication of such notice.

After the expiration of the time specified in the notice, no claim shall be received for any such principal moneys or interest, and so much of the mortgage debt of the said trust as consists of principal moneys or interest for which no claim has been sent in shall be extinguished. (j)

4 *Geo. IV. c. 95, s. 75, to be repealed, and the provisions of 27 & 28 Vict. c. 101, s. 25, to be enacted.*

20. The seventy-fifth section of the Act of the fourth year of his late Majesty George the Fourth, chapter ninety-five, shall be repealed on and after the first day of the year one thousand eight hundred and seventy-two; and

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(g) Where the trust has expired before its affairs have been completely wound up, the Local Government Board may appoint a person to complete the winding up under 39 & 40 Vict. c. 39, s. 9, *post*, p. 283.

(h) See 40 & 41 Vict. c. 64, s. 9, *post*, p. 283.

(i) If the notice is not given in accordance with these provisions, the Local Government Board may prescribe other dates for its publication, see 39 & 40 Vict. c. 39, s. 8, *post*, p. 282.

(j) See 39 & 40 Vict. c. 39, s. 10; and 40 & 41 Vict. c. 64, s. 9, *post*, p. 283.

instead thereof, be it enacted, if any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is at any time found straying or lying about any turnpike road, or across any part thereof, or by the sides thereof (except on such parts of any turnpike road as pass over any common, or waste, or unenclosed ground), the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding five shillings, to be recovered in a summary manner, together with the reasonable expense of removing such animal from the turnpike road where it is found to the fields or stable of the owner or owners, or to the common pound (if any) of the parish where the same shall be found, or to such other place as may have been provided for the purpose: Provided always, that no owner of any such animal shall in any case pay more than thirty shillings, to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorized keeper of the pound: Provided also, that nothing in this Act shall be deemed to extend to take away any right of pasturage which may exist on the sides of any turnpike road. (*k*)

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35 & 36 VICT. CAP. 85.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND TO MAKE FURTHER PROVISIONS CONCERNING TURNPIKE ROADS. [10TH AUGUST, 1872.]

*Provisions in "Railway Clauses Consolidation Act, 1845," relating to Turnpike Roads to continue to apply to such Roads on their becoming ordinary Highways.—8 & 9 Vict. c. 20, ss. 46–67.*

13. Such of the provisions of the "Railway Clauses Consolidation Act, 1845," with respect to the crossing of roads and other interference therewith as relate to turnpike roads


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(*k*) See 27 & 28 Vict. c. 101, s. 25, *ante*, p. 144.

shall continue in force in relation to any road which, having been a turnpike road, may, at any time after the passing of this Act, become an ordinary highway, in the same manner as if such road had continued to be a turnpike road; and in the construction of the said provisions, when applied to any such road as aforesaid, if the road is within the jurisdiction of a Highway Board, such Highway Board shall be deemed to be the trustees or commissioners thereof; and in other cases the surveyor or other local authority having the care of the road shall be deemed to be such trustees or commissioners. (D)

*Highway Board may voluntarily repair Turnpike Road at the cost of District Fund.*—26 & 27 Vict. c. 94, s. 1; 34 & 35 Vict. c. 115, s. 15.

14. A Highway Board may, if they think fit, either repair or contribute to the repair of a turnpike road within their district, notwithstanding that no order of contribution may have been made upon the Board in pursuance of the first section of "The Annual Turnpike Acts Continuance Act, 1863"; (m) and all moneys so expended by the Board shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly on the district fund; and this section shall be deemed to take effect from the first of January one thousand eight hundred and seventy-two.



*Power to Highway Boards to pay off Debts on Turnpikes.*

15. For the purpose of facilitating the abolition of tolls on any turnpike road within or passing through a highway district, the Highway Board and the trustees of the turnpike road may mutually agree that the Highway Board shall take upon themselves the maintenance and repair of such turnpike road, or so much thereof as is

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(D) See Glen's "Law of Railways," vol. ii., for the clauses of the "Railway Clauses Consolidation Act, 1845," referred to in this section; and also for the decisions of the Courts on those clauses.

(m) See 26 & 27 Vict. c. 94, s. 1, *ante*, p. 257.

within their district, and thereupon the Highway Board shall pay off and discharge, where the turnpike is wholly within the highway district, the debt that may remain and be subsisting on the trusts of such turnpike road, or such sum by way of composition, but in full discharge of such debt, as the Local Government Board may, after inquiry, determine; and where the turnpike is not wholly within such district, such sum as the Local Government Board may in like manner determine as an equitable proportion of such debt or composition for the same.

The abolition of such tolls shall be deemed to be an improvement of highways within the meaning of sections forty-seven, forty-eight, and fifty of the "Highway Act, 1864," (n) and for such purpose the Highway Board may borrow money in accordance with the provisions of those sections, subject to the following provisions, viz.:—

That the improvement shall be deemed to be on behalf of all the parishes within the district, and each parish shall contribute thereto in the same proportion as it contributes to the district fund.

### 36 & 37 VICT. CAP. 90.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, TO REPEAL CERTAIN OTHER TURNPIKE ACTS, AND FOR OTHER PURPOSES CONNECTED THEREWITH.

[5TH AUGUST, 1873.]

*Repeal (in part) of 4 Geo. IV. c. 95. s. 39.*

13. So much of the thirty-ninth section of the Act of the session of the fourth year of the reign of His late Majesty King George the Fourth, chapter ninety-five, as requires that no order or determination at a meeting of the trustees or commissioners of any turnpike road once made, agreed upon, or entered into, shall be revoked or altered at any subsequent meeting, unless such revocation

(n) See *ante*, pp. 166, 170, 171.

or alteration shall be agreed to be made by a greater number of trustees or commissioners than concurred in the making of any such order or determination, is hereby repealed.

Provided that no such order or determination shall be revoked or altered at any subsequent meeting, unless notice in writing, signed by the clerk to the trustees or commissioners, of the intention to make such revocation or alteration has been sent by post or delivered to all the trustees or commissioners at least seven days before the meeting at which such revocation or alteration is made.

*Amendment of 3 Geo. IV. c. 126, s. 55.*

14. Where a turnpike trust is about to expire, and the tolls are let for a term which will expire before the termination of the trust, it shall be lawful for the trustees of such turnpike trust to arrange with the lessee of the tolls for an extension of the term for which such tolls have been let, until the period appointed for the expiration of the trust, not exceeding twelve months, notwithstanding the provision of the fifty-fifth section of the Act passed in the third year of the reign of His late Majesty King George the Fourth, chapter one hundred and twenty-six, limiting the lease of such tolls to three years.

*Power to Local Government Board to assess value of Debts.*

15. If any Highway Board or other local authority shall be desirous of taking upon themselves the maintenance and repair of the roads of any turnpike trusts within or passing through their districts, (o) such Highway Board or other local authority may, if not less than one-half in length of such road is within the district, apply to the Local Government Board to determine the value of the existing debt and other liabilities of such turnpike trust, and the Local Government Board may, by order

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(o) See also 38 & 39 Vict. c. 55, s. 148, under which any urban sanitary authority may by agreement take upon themselves the maintenance, repair, cleansing, or watering of turnpike and other roads, and may remove the toll-gates and erect others.

made after such inquiry and the publication of such notice as they may think sufficient, determine the value of such debt and liabilities; (p) and the trustees and other persons interested in such debt and liabilities shall accept a sum equivalent to the value so determined as a full and complete discharge of such debt and liabilities; and from and after a day to be fixed by the said Local Government Board no tolls shall be levied on the roads theretofore included within the district of such turnpike trust; and in case the said turnpike trust shall extend beyond the district of the Highway Board or local authority making the application as aforesaid, it shall be lawful for the said Local Government Board to apportion the value of the debts and liabilities of such turnpike trust so determined as aforesaid, between the several local authorities through whose districts the roads of such turnpike trust extend, and each such local authority shall raise and pay to the trustees the amount apportioned to such authority.

Provided that an order made under this section shall not take effect until the expiration of one calendar month after the same has been published in the *London Gazette* and some local newspaper circulating in the locality of the turnpike trust affected thereby; and if two-thirds in number and value of the creditors of the trust shall give notice in writing to the Local Government Board before such order takes effect that they object to the same, the order shall be provisional only, and shall not come into operation until it has been confirmed by Parliament.

*Power to raise Money for Abolition of Tolls.*

16. The abolition of the tolls on a turnpike road in consequence of any such order as aforesaid shall in the case of a highway district be deemed to be an improvement of highways within the meaning of sections forty-seven, forty-eight, and fifty of "The Highway Act, 1864," (q) and for such purpose the Highway Board may borrow money in accordance with the provisions of those sections, subject to

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(p) See 37 & 38 Vict. c. 95, s. 11, *post*, p. 279.

(q) See *ante*, pp. 166, 170, 171.



the following provisions, viz.:—That the improvement shall be deemed to be on behalf of all the parishes within the district, and each parish shall contribute thereto in the same proportion as it contributes to the district fund.

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37 & 38 VICT. CAP. 95.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, AND TO REPEAL CERTAIN OTHER TURNPIKE ACTS; AND FOR OTHER PURPOSES CONNECTED THEREWITH.

[7TH AUGUST, 1874.]

*Repair of Roads by Highway Authorities in certain Cases.*

10. Where by any Annual Turnpike Acts Continuance Act it is or shall be provided that no money shall be expended in the repair of any turnpike road, such turnpike road shall be deemed to be a highway, and shall be repairable as such; provided that where such highway or any portion thereof shall pass through any highway district constituted under the Highway Acts, 1862 and 1864, the cost of maintaining such highway, or any such portion thereof, shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly on the district fund.

*Apportionment of Bonded Debt under 36 & 37 Vict.  
cap. 90, s. 15.*

11. Where the Local Government Board in exercise of the discretionary power conferred upon them by section fifteen of "The Annual Turnpike Acts Continuance Act, 1873," make an order determining the value of the existing debt and liabilities of a turnpike trust, the Board may by the same order declare to whom and in respect of what claim or claims the whole or any part of the value of such debt and liabilities is to be paid.

The term "existing debt and other liabilities" used in the said fifteenth section of "The Annual Turnpike Acts

Continuance Act, 1873," means the bonded or mortgage debt of a turnpike trust, and any unpaid interest due thereon.

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38 & 39 VICT. CAP. 55.

AN ACT FOR CONSOLIDATING AND AMENDING THE ACTS RELATING TO PUBLIC HEALTH IN ENGLAND.

[11TH AUGUST, 1875.]

*Transfer of powers and duties of Secretary of State under Highway and Turnpike Acts to Local Government Board. (r)*

Sch. V, Part iii. All powers, duties, and acts vested in, imposed on, or required to be done by or to one of Her Majesty's principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts and bridges in England and Wales, shall be imposed on and be done by or to the Local Government Board, subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of the "Public Health Act, 1872," or as near thereto as circumstances admit.

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38 & 39 VICT. CAP. CXCIV. (s)

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, AND TO REPEAL CERTAIN OTHER TURNPIKE ACTS; AND FOR OTHER PURPOSES CONNECTED THEREWITH.

[11TH AUGUST, 1875.]

*Extension of 4 & 5 Vict. c. 49.*

8. For the purpose of rebuilding any bridge which, on the expiration of a turnpike trust, becomes a county

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(r) This enactment was originally contained in s. 36 of the Public Health Act, 1872 (35 & 36 Vict. c. 79); it is repealed with the remainder of that Act by s. 343, and Sch. 1 part i. of the Public Health Act, 1875, and re-enacted as above set out by the same section and part iii. of the same schedule.

(s) This Act was printed among the Local and Personal Acts of the year.

bridge, it shall be lawful for the justices in quarter sessions assembled to borrow, under the provisions of the Act of the fourth and fifth years of Her present Majesty, chapter forty-nine, any sums that may be necessary, although such sums do not amount to one fourth of the amount of the ordinary annual assessment for the rate of any county, riding, or division.

*Limitation of notice of Sale of Toll-houses, &c., under  
34 & 35 Vict. c. 115.*

9. The notice required by section seventeen of the Act of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter one hundred and fifteen, (t) to be given to the highway authority by the trustees or commissioners of a turnpike trust about to expire before selling any toll-house, or the site thereof, or any part of the site, or any part of any garden or land belonging thereto, may be given at any time within two years and not later than two months before the expiration of the trust: Provided that in case of any such sale it shall be incumbent upon the trustees or commissioners to make such arrangements as may be necessary in order to secure for themselves, their lessees or servants, the occupation of any toll-house so sold until the expiration of the trust.

*Repair and maintenance of hundred bridges in Kent.*

10. Whereas in the county of Kent there are certain bridges called "hundred bridges," repairable by hundred rates, but such rates cannot be levied without great difficulty and expense: Be it therefore enacted, that the aforesaid bridges, whether situate upon a turnpike road or highway, shall hereafter be deemed to be county bridges, and the repair and maintenance of such bridges shall fall upon and be borne by the county rates of the said county, in the same manner as other county bridges are now repaired and maintained under the provisions of the existing Acts relating to such bridges. (u)

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(t) See 34 & 35 Vict. c. 115, s. 17, *ante*, p. 271.

(u) These Acts will be found in Glen's "Law of Highways."

*Provision with respect to Tolls in newly constituted Sanitary Districts.*

11. Where in a Turnpike Act provision has been made that, in any place in which the Local Government Act or any Act relating to the Public Health Act is from time to time in force, none of the tolls or moneys received by the trustees by virtue of such Turnpike Act shall be expended in maintaining, repairing, or improving any roads within the limits of such place, and that the trustees shall not take any toll or erect or continue any toll-gate within such limits, the Local Government Board may, if they think fit, in any case in which a district has been constituted under the Sanitary Acts, whether by provisional order or otherwise, after the 24th day of June, 1875, declare by order that such provision shall be suspended during the whole or any part of the continuance of such Turnpike Act, and such provision shall be suspended accordingly.

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39 & 40 VICT. CAP. 39.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, AND TO REPEAL CERTAIN OTHER TURNPIKE ACTS; AND FOR OTHER PURPOSES CONNECTED THEREWITH.

[11TH AUGUST, 1876.]

*Extension of time for giving Notice for extinction of unclaimed Mortgage Debt.*

8. Where the notice required by the nineteenth section of "The Annual Turnpike Acts Continuance Act, 1871," (v) has been omitted to be given by the trustees of a turnpike trust about to expire, the Local Government Board may, by order, prescribe some other dates for the publication of such notice, and the dates so prescribed shall be substituted for those mentioned in such section, and the provisions contained in the said section shall take effect in every other respect as if the notice had been given at the times specified in such section.

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(v) See 34 & 35 Vict. c. 115, s. 19, *ante*, p. 273.

*Power to appoint a person to wind up an expired Trust.*

9. Where the powers of the trustees of any turnpike trust shall have ceased before the affairs of their trust shall have been completely wound up, (w) the Local Government Board may, by order, appoint some fit and proper person to complete the winding-up of the affairs of the trust, and such person shall have and exercise all the powers which would have been possessed by the trustees for that purpose if the trust had not ceased.

*Provision for rateable distribution of Funds in hand amongst Creditors.*

10. Where provision has been or shall hereafter be made in any Annual Turnpike Acts Continuance Act for the continuance of a turnpike trust to a specified date and no longer, it shall be lawful for the trustees to divide, from time to time, any moneys arising under such trust, and which have been set apart, or may be applicable, towards the discharge of the principal debts owing on the security of the tolls, rateably among the creditors, notwithstanding the provision in any Act of Parliament directing such moneys to be paid after proposals for composition, and without being required to advertise for such proposals previously to the division: Provided that when the trustees elect to proceed under this section, they may from time to time postpone the distribution of the amount which may be so set apart or applicable as aforesaid, although the same amounts to, or exceeds the sum of two hundred pounds.

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 40 & 41 VICT. CAP. 64.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS IN GREAT BRITAIN, AND TO REPEAL CERTAIN OTHER TURNPIKE ACTS; AND FOR OTHER PURPOSES CONNECTED THEREWITH.

[14TH AUGUST, 1877.]

*Amendment of Section 19 of 34 & 35 Vict. c. 115.*

9. In addition to the notice required by the nineteenth section of "The Annual Turnpike Acts Continuance Act,

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(w) See 34 & 35 Vict. c. 115, s. 18, *ante*, p. 272.

1871," (x) to be published in certain newspapers, the trustees of a turnpike trust about to expire, shall cause a copy of such notice to be sent by post to each of the creditors at his last known place of abode: Provided that notwithstanding any thing in the said section contained, it shall be lawful for the trustees of any turnpike trust to pay or satisfy the claim of any creditor of such trust whose debt has been acknowledged by them at any time within five years immediately preceding the expiration of such trust, although such creditor may have omitted to give notice of his claim; and this provision shall be deemed to apply to and include any trust, the affairs of which have not been completely wound-up at the time of the passing of this Act.

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41 & 42 VICT. CAP. 62.

AN ACT TO CONTINUE CERTAIN TURNPIKE ACTS, AND TO REPEAL CERTAIN OTHER TURNPIKE ACTS; AND FOR OTHER PURPOSES CONNECTED THEREWITH. [16TH AUGUST, 1878.]

*Continuance of all other Turnpike Acts.*

8. Such provisions, if any, of the said Acts mentioned in the said Schedules as are not affected by the preceding sections, and all other Acts now in force for regulating, making, amending, or repairing any turnpike road which will expire at or before the end of the next Session of Parliament, shall continue in force until the first day of November one thousand eight hundred and seventy-nine, and to the end of the then next Session of Parliament, unless Parliament in the meantime otherwise provides; but this section shall not affect any Act continued to a specified date and no longer.

*Alteration of Dates for making up of Accounts and Estimates.*

9. From and after the passing of this Act, the annual statement and estimates of debts, revenue, and expenditure

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(x) See 34 & 35 Vict. c. 115, s. 19, *ante*, p. 273.

respectively referred to in the Act of the third and fourth years of King William the Fourth, chapter eighty, and in section six of the Act of the twelfth and thirteenth year of Her present Majesty, chapter eighty-seven, (y) shall be made out for the year ending on the twenty-fifth day of March instead of from the first day of January to the thirty-first day of December.

Provided that the first of such statements made after the passing of this Act shall be made out in respect of the period between the thirty-first day of December one thousand eight hundred and seventy-seven and the twenty-fifth day of March one thousand eight hundred and seventy-nine, and the first of such estimates so made shall be in respect of the period between the thirty-first day of December one thousand eight hundred and seventy-eight and the twenty-fifth day of March one thousand eight hundred and eighty.

*Alteration of Date of Annual Meeting of Turnpike Trustees.*

10. The general annual meeting of the trustees or commissioners of every turnpike road shall be held between the twenty-fifth day of March and the twenty-fifth day of June, and the latter of such dates shall be deemed to be substituted for the twenty-fifth day of March in the enactments relating to such meetings.

The date on or before which the clerk to the trustees or commissioners of any turnpike road shall transmit to the Local Government Board a copy of the annual statement of the debts, revenue, and expenditure of the trust in cases where the said trustees or commissioners shall not have held their general annual meeting on or before the twenty-fifth day of June shall be the twenty-fourth day of July.

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(y) See 32 & 33 Vict. c. 90, s. 7, *ante*, p. 267.





## APPENDIX A.

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### THE COMMISSIONERS' CLAUSES ACT, 1847.

10 VICT. CAP. 16. (a)

AN ACT FOR CONSOLIDATING IN ONE ACT CERTAIN PROVISIONS  
USUALLY CONTAINED IN ACTS WITH RESPECT TO THE CONSTITUTION  
AND REGULATION OF BODIES OF COMMISSIONERS APPOINTED FOR  
CARRYING ON UNDERTAKINGS OF A PUBLIC NATURE.  
[23RD APRIL, 1847.]

#### MORTGAGES.

And with respect to the mortgages to be executed by the Commissioners, be it enacted as follows:—

##### *Form of Mortgage.*

LXXV. Every mortgage or assignation in security of rates or other property authorized to be made under the provisions of this or the Special Act shall be by deed duly stamped, in which the consideration shall be truly stated; and every such deed shall be under the common seal of the Commissioners if they be a body corporate, or if they be not a body corporate shall be executed by the Commissioners, or any five of them, and may be according to the form in the Schedule (B) to this Act annexed or to the like effect; (b) and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and assessments or other property comprised in such mortgages or assignations respectively, according to the respective sums in such mortgages or assignations mentioned to be advanced by such mortgagees or assignees respectively, and to be repaid the sums so advanced, with interest, without any preference one above

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(a) See 27 & 28 Vict. c. 101, s. 50, *ante*, p. 171.

(b) An alternative form is given in the second schedule to the 27 & 28 Vict. c. 101, *ante*, p. 178.

another by reason of the priority of advancing such moneys, or of the dates of any such mortgages or assignments respectively.

*Register of Mortgages to be kept and to be open to inspection.*

LXXVI. A register of mortgages or assignments in security shall be kept by the Clerk to the Commissioners, and where by the Special Act the Commissioners are authorized or required to raise separate sums on separate rates or other property, a separate register shall be kept for each class of mortgages or assignments in security, and within fourteen days after the date of any mortgage or assignment in security an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register, and every such register may be perused at all reasonable times by any person interested in any such mortgage or assignment in security without fee or reward.

*Transfers of Mortgages.*

LXXVII. Any person entitled to any such mortgage or assignment may transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be duly stated; and every such transfer may be according to the form in the Schedule (C) to this Act annexed, or to the like effect. (c)

*Register of Transfers to be kept.*

LXXVIII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the clerk to the Commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage or assignment in security, and for such entry the clerk may demand a sum not exceeding five shillings; and after such entry every such transfer shall entitle the transferee, his executors, administrators, or assigns, to the full benefit of the original mortgage or assignment in security, and the principal and interest thereby secured; and such transferee may in like manner assign or transfer the same again, *toties quoties*: and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage or assignment so transferred, or any money thereby secured.

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(c) An alternative form is given in the second schedule to 27 & 28 Vict. c. 101, *ante*, p. 179.

*Interest on Mortgages to be paid Half-yearly.*

LXXIX. Unless otherwise provided by any mortgage or assignation in security, the interest of the money borrowed thereupon shall be paid half-yearly to the several parties entitled thereto.

*Power to borrow Money at a lower rate of Interest, to pay off Securities at a higher rate.*

LXXX. If the Commissioners can at any time borrow or take up any sum of money at a lower rate of interest than any securities given by them and then be (*sic*) in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge such securities bearing such higher rate of interest, and may charge the rates and other property which they may be authorized to mortgage or assign in security under this or the Special Act, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other moneys borrowed on mortgage or assignation in security.

*Repayment of Money borrowed at a Time and Place agreed upon.*

LXXXI. The Commissioners may, if they think proper, fix a period for the repayment of all principal moneys borrowed under the provisions of this or the Special Act, with the interest thereof, and in such case the Commissioners shall cause such period to be inserted in the mortgage deed or assignation in security; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed such principal and interest shall be payable at the office of the Commissioners.

*Repayment of Money borrowed when no Time or Place has been agreed upon.*

LXXXII. If no time be fixed in the mortgage deed or assignation in security for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose; and in the like case the Commissioners may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor shall be delivered to the clerk or left at the office of the Commissioners, and if given by

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the Commissioners shall be given either personally to such mortgagee or creditor, or left at his residence, or if such mortgagee or creditor be unknown to the Commissioners, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London Gazette* if the office of the Commissioners is in England, the *Edinburgh Gazette* if it is in Scotland, or in the *Dublin Gazette* if it is in Ireland.

*Interest to cease on expiration of Notice to pay off a Mortgage Debt.*

LXXXIII. If the Commissioners shall have given notice of their intention to pay off any such mortgage or assignation in security at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the Commissioners fail to pay the principal and interest due at the expiration of such notice on such mortgage or assignation in security.

*Moneys borrowed on security of Rates to be paid off in a limited Period.*

LXXXIV. In order to discharge the principal money borrowed as aforesaid on security of any of the rates, the Commissioners shall every year appropriate and set apart out of such rates respectively a sum equal to the prescribed part, and if no part be prescribed one-twentieth part of the sums so borrowed respectively, as a sinking fund to be applied in paying off the respective principal moneys so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of Exchequer Bills or other Government securities, or in Scotland deposited in one of the banks there incorporated by Act of Parliament or Royal Charter, and to be increased by accumulation in the way of compound interest or otherwise until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof, which the Commissioners shall think ought then to be paid off, at which time the same shall be so applied in paying off the same in manner hereinafter mentioned.

*Mode of paying off Mortgage Debts.*

LXXXV. Whenever the Commissioners shall be enabled to pay off one or more of the mortgages or assignations in security which shall be then payable, and shall not be able to pay off the whole of the same class, they shall decide the order in which they shall be paid off by lot among the class to which such one or more of the mortgages or assignations in security belong, and shall cause a

notice, signed by their clerk, to be given to the persons entitled to the money to be paid off, pursuant to such lot, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified, at the expiration of six months from the date of giving such notice.

*Arrears of Interest, when to be enforced by appointment of a Receiver—Arrears of Principal and Interest.*

LXXXVI. Where by the Special Act the mortgagees or assignees in security of the Commissioners are empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due to them, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage or assignation in security has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee or assignee in security may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts, require the appointment of a receiver, by an application to be made as herein-after provided; and if within six months after the principal money owing upon any such mortgage or assignation in security has become payable, and after demand thereof in writing the same be not paid, together with all interest due in respect thereof, the mortgagee or assignee in security, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts, may, if his debt amount to the prescribed sum, alone, or if his debt do not amount to the prescribed sum, he may in conjunction with other mortgagees or assignees in security, whose debts being so in arrear, after demand as aforesaid, together with his amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

*As to the Appointment of Receiver.*

LXXXVII. Every application for a receiver in the cases aforesaid shall in England or Ireland be made to two justices, and in Scotland to the sheriff, and on any such application such justices or sheriff may, by order in writing, after hearing the parties, appoint some person to receive the whole or a competent part of the rates or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the rates or sums aforesaid, be fully paid; and upon such appointment being made all such rates or sums of money as aforesaid, or such part thereof as may be ordered by the said justices or sheriff, shall be paid to the person so

to be appointed, and the money so paid shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed, and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

*Account Books to be open to the inspection of Mortgagees.*

LXXXVIII. The books of account of the Commissioners shall be open at all seasonable times to the inspection of the respective mortgagees or assignees in security of the Commissioners, with liberty to take extracts therefrom without fee or reward.

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SCHEDULE B. (d)

*Form of Mortgage.*

By virtue of [*here name the special Act*], We [*here name the corporation, if the Commissioners be incorporated, or if not incorporated, five of the Commissioners*], appointed in pursuance of the said Act, in consideration of the sum of \_\_\_\_\_ paid to the treasurer to the said Commissioners by A. B., of \_\_\_\_\_, for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the rates, rents, profits, and other moneys arising or accruing by virtue of the said Act from [*here describe the rates or other property proposed to be mortgaged*], as the said sum of \_\_\_\_\_ doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, rents, profits, or moneys, to hold to the said A. B., his executors, administrators, and assigns, from this day until the said sum of \_\_\_\_\_, with interest at \_\_\_\_\_ per centum per annum for the same, shall be fully paid and satisfied (the principal sum to be repaid at the end of \_\_\_\_\_ years from the date hereof [*in case any period be agreed upon for that purpose*]). Given under our corporate seal [*or, in witness whereof we have hereunto set our hands and seals, or, if the deed be granted in Scotland, insert the testing clause required by the law of Scotland, as the case may be*], this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

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(d) See s. 75, *ante*, p. 287, also 27 & 28 Vict. c. 101, s. 50, p. 171.

## SCHEDULE C. (e)

*Form of Transfer of Mortgage.*

I, A. B., of \_\_\_\_\_, in consideration of the sum of \_\_\_\_\_, paid to me by C. D., of \_\_\_\_\_, do hereby transfer to the said C. D., his executors, administrators, and assigns, a certain mortgage [*or, if the deed be granted in Scotland, a certain assignation in security*], number \_\_\_\_\_, made by "The Commissioners for executing the [*here name the special Act*]", to \_\_\_\_\_, bearing date \_\_\_\_\_ day of \_\_\_\_\_, for securing the sum of \_\_\_\_\_, and \_\_\_\_\_ interest [*or, if such transfer be by endorsement, the within security*], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates, rents, profits, or other moneys thereby assigned. In witness whereof I have hereunto set my hand and seal [*or, if the deed be granted in Scotland, insert the testing clause required by the law of Scotland*] this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_.

## COMMON LAW PROCEDURE ACT, 1854.

## 17 &amp; 18 VICT. c. 125 (f).

AN ACT FOR THE FURTHER AMENDMENT OF THE PROCESS, PRACTICE, AND MODE OF PLEADING IN AND ENLARGING THE JURISDICTION OF THE SUPERIOR COURTS OF COMMON LAW AT WESTMINSTER, AND OF THE SUPERIOR COURTS OF COMMON LAW OF THE COUNTIES PALATINE OF LANCASTER AND DURHAM. [12TH AUGUST, 1854.]

*Power to Court or Judge to direct Arbitration before Trial.*

III. If it be made to appear, at any time after the issuing of the writ, to the satisfaction of the court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, it shall be lawful for such court or judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly

(e) See s. 77, *ante*, p. 288; also 27 & 28 Vict. c. 101, s. 50, *ante*, p. 171.

(f) See 27 & 28 Vict. c. 101, s. 41, *ante*, p. 162.

or in part, be referred to an arbitrator appointed by the parties, or to an officer of the court [or, in country causes, to the judge of any county court (g)], upon such terms as to costs and otherwise as such court or judge shall think reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.

*Special Case may be stated, and Question of Fact tried.*

IV. If it shall appear to the court or a judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the court, or upon a question of fact fit to be decided by a jury, or by a judge, upon the consent of both parties, as hereinbefore provided, (h) it shall be lawful for such court or judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.

*Arbitrator may state Special Case.*

V. It shall be lawful for the arbitrator upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the superior courts of law or equity at Westminster, if he shall think fit, and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the court.

*Power to Judge to direct Arbitration at time of Trial, when issues of fact left to his Decision.*

VI. If upon the trial of any issue of fact by a judge under this Act it shall appear to the judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the court, [or, in country causes, to a judge of any county court, (g)] upon such terms as to costs, and otherwise, as such judge shall think reasonable; and the award or certificate

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(g) 21 & 22 Vict. c. 74, s. 5, repeals so much of this Act as enables the judge to refer a cause to a county court judge.

(h) See s. 1 of the Act.



of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; (i) and it shall be competent for the judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

*Proceedings before and Power of such Arbitrator.*

VII. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of court or judge's order.

*Power to send back to Arbitrator.*

VIII. In any case where reference shall be made to arbitration as aforesaid the court or a judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the re-consideration and re-determination of the said arbitrator, upon such terms, as to costs and otherwise, as to the said court or judge may seem proper.

*Application to set aside the Award.*

IX. All applications to set aside any award made on a compulsory reference under this Act shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties.

*Enforcing of Awards within Period for setting them aside.*

X. Any award made on a compulsory reference under this Act may, by authority of a judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed.

XI. If action commenced by one party after all have agreed to arbitration, court or judge may stay proceedings.

XII. On failure of parties or arbitrators, judge may appoint single arbitrator or umpire.

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(i) See s. 3, *supra*.

XIII. *When reference is to two arbitrators, and one party fail to appoint, the other party may appoint arbitrator to act alone.*

XIV. *Two arbitrators may appoint umpire.*

*Award to be made in Three Months, unless Parties or Court enlarge time.*

XV. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award; and it shall be lawful for the superior court of which such submission, document, or order is or may be made a rule or order, or for any judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

XVI. *Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment.*

XVII. *Agreement or submission in writing may be made rule of court, unless a contrary intention appear.*

## APPENDIX B.

## CONSTRUCTION AND REPAIR OF ROADS.

WILLIAM NETHERSOLE, Esq., M.I.C.E., has kindly contributed the following paper on the subject of road construction :—

In the engineering sense of the term, a road is a surface of a certain width capable of being traversed by wheel vehicles, and differs from a railway or tramway in allowing passage over all its parts and in any direction.

In the preparation of the roadway, and the selection of its route, the object sought is economy of the motive power used in transport ; and this object is promoted by easy inclines and a hard and smooth surface. To attain the minimum expenditure of motive power in transport between two points, the route of the road ought to be a straight line in a plane passing through the two given points. Since, however, to carry the road on one plane would cause too great an outlay in the construction of the works except in cases where the contour of the ground is very favourable, a road usually undulates or is carried over a series of planes inclined to suit within certain limits the natural undulations. The general rate of inclination of these planes is called the ruling gradient, and its maximum is determined by the nature of the road surface.

It is of great importance that the ruling gradient should be sufficiently flat, so as not to allow of a vehicle rolling down by its own gravity. When the amount of the resistance of vehicles to traction along a level part of the road is found, the limit of the gradient of stability is easily determined, and is that angle whose tangent is the resistance on the level divided by the weight of the vehicle. According to Telford, of the average of vehicles drawn over broken stone roads, this resistance is about one-thirtieth of the weight, and it is upon this assumption that the ruling gradient is usually restricted to one in thirty. Where the surface of the road is made harder and smoother than ordinary to ensure stability, the ruling gradient may be less. Mahan recommends that gradients, as a rule, should be kept as low as one in thirty-three. M. Dumas recommends one in fifty as a maximum. M. Dupuit gives for metalled roads one in thirty-three, and for pavements one in fifty. Sir John McNeil gives one in forty as a maximum slope ; and this

proportion is almost the average of the above figures. Sometimes the preservation throughout of a gradient of one in thirty and one in thirty-three is attended with considerable difficulty, and it is necessary to have a steeper ascent in some places. The steepest of these occasional ascents ought never to be greater than that over which a horse which has its full duty to perform on the other parts of the road can drag its load without the additional effort being injurious. A horse is found to be able to exert for a short time a force about three times as great as its ordinary traction, and from this it is found that the steepest ascent on a broken stone road of average smoothness ought not to exceed one in twenty. A steeper ascent than this, or one of this steepness for any great distance, except where auxiliary power can be obtained, involves a loss of power, since the horse, to be able to surmount it, must draw less than its full load. It is not advisable to have any part of a road quite level, nor one continuous incline without a break of gradient. A slight declivity facilitates drainage.

The width of a main or turnpike road varies from fifty to thirty feet, and the footpaths from fifteen to five feet, according to the amount of traffic to be accommodated. Cross or accommodation roads are usually about twenty feet wide.

To provide a surface fitted for the rolling of carriages, the surface of the ground is reduced where necessary to the maximum gradient by cutting and embankment, in other words the formation level is usually covered with a series of layers of broken stone. Surfaces made with stones regularly dressed either with wood, or with bitumen and asphalt, are met with only in the streets of towns, or where the traffic is very great, and it is desirable to have a road as free from dust as possible; and though these are included in the definition of a road, they are usually classed under the name "pavements." For a broken stone road the stone should be hard and durable. The kinds most suitable are granite, trap rock, and some of the harder limestones. The fragments ought to be roughly cubical, with sharp corners, and small enough to pass through a ring two inches in diameter. It is also advisable to have the pieces as nearly equal in size as possible. Gravel and flints may be used for road material, but must first be carefully broken and freed from sand and dirt. Stones thus prepared, after having been subjected for some time to the rolling of vehicles, combine and become a compact mass.

The material ought to be spread in layers of about three inches thick, and each layer should be left to be partly consolidated before another is laid. The whole depth of road material need not exceed ten inches, and in many cases a depth of five or six inches is sufficient.

Footpaths are made of a material similar to that used for the roadway, but broken smaller, and consolidated by means of a heavy roller.

Unbroken gravel does not consolidate under traffic, and by its incoherency presents a resistance to traction much greater than that of a broken stone road.

In the roads made by Telford, previous to spreading the road material, a rough causeway was laid. This he considered the stable surface which was to sustain the traffic, and the broken stone only a covering to protect it. In M'Adam's system of road-making, no causeway is used, it having been asserted that broken stone, by its beforementioned property of combining, becomes of itself sufficiently stable to serve all the purposes of a roadway. This plan has, however, proved erroneous, and is now abandoned, or at least disapproved. In very soft ground a foundation is necessary; and this is usually made by excavating to a depth of three or four feet, filling up and forming a mound with dry packed material. Mosses are sometimes crossed by laying bundles of furze to serve as a raft to bed the roadway. On a retentive clay soil a substratum of sand or fine clean gravel is advantageous as a means of drainage.

In the transverse section, the road ought to slope from the centre to the sides, in order that surface water may find its way quickly to the ditches or to a covered drain communicating with the natural watercourses of the district. On a gradient this transverse declivity ought always to exceed the declivity longitudinally; but on the level parts a rise of six inches in the middle is sufficient for a road thirty feet wide. In order that the thickness of road material may be uniform, this convexity ought to be given to the formation. That the metalling of the road should be of uniform thickness and quality in the cross section and throughout is obvious; for if the sides have less coating of stone given to them, ruts are soon worn, and the traffic driven into the centre. Again, in repairing the road when required, one-half the width of way can be readjusted without obstruction to passage of vehicles. The bottoms of the ditches ought to be at least one foot below the formation surface, and the width proportional to that of the road. For turnpike roads a width at top of from three to four feet is sufficient, when surface water only has to be received, and in well-made compact roads water should not penetrate to the subsoil. The excavation from the ditch is usually formed into a mound on the side towards the road, and planted with quickset. Openings are cut at intervals in this mound to allow the water to pass through. Where there is a footpath, a gutter is formed between it and the road by raising the pathway from six to nine inches. Sometimes the gutter is formed by curbing the footpath and pitching. Where a ditch cannot be used, the surface water is drained through gratings placed in the gutters to a culvert below. Ground containing springs is usually avoided in laying out the route; but where such ground has to be passed over, the springs ought to be carefully built over, and the water conducted to the ditches by small culverts. On the proper

construction and maintenance of these arrangements for getting rid of water the stability of the road chiefly depends.

The wear of road material caused by traffic must be replaced from time to time, and the ruts and hollows filled up by spreading fresh stones, taking care to preserve the original form of cross section. The oftener the road is thus renewed, and the thinner the layer of material spread at one time the better. Before laying new material, the surface ought to be loosened with the pickaxe, to ensure amalgamation. One cubic yard of stones of the prescribed size is just sufficient to cover completely 1 pole, or  $30\frac{1}{4}$  yards superficial. In some places it is usual to spread over the newly-laid material a layer of fine gravel and sand, for the purpose of easing the draught; and the newly-made road should then be rolled by a steam-roller, or roller drawn by horse-power.

In towns, a new road should be made of twelve inches hard core, such as basalt, granite, whinstones, beach pebbles, and other of the toughest stones, broken to two-and-a-half or two-inch cubes, or burnt ballast, four inches of clean pit ballast and four inches of flints; the channels paved with granite, not less than eighteen inches wide and seven inches deep, and the footways with two-and-a-half inch York stone, and kerbed with granite, the kerb twelve inches by eight inches, laid upon a hard foundation; frequently stone blocks, wood, or asphalt pavement is preferred; and in such case the pavement is laid down under contract with the paving companies selected, who have all different methods of paving. The experience of several of these pavements has been gained from different examples laid down in the City of London.

All the means of drainage, gutters, tile drains, mound openings, underground culverts, &c., must be kept clear, and the ditches deepened when necessary.

On a properly constructed road very little mud collects, but when any does so, it ought to be removed by lightly scraping. Mud-carts, fitted with revolving brooms worked by the forward action of the cart, have proved most efficient removers of mud. It has been found that four cart-loads of mud are removed from macadamised roads for one cart-load from granite, and half a load from the wood pavements. All hedges ought to be trimmed, and none allowed to exceed five feet in height, that the sun and wind may have free access. In very dry weather, and where the means are convenient, it is advantageous to water the road occasionally not only for the purpose of laying the dust, but to prevent the rapid pulverisation of the material which takes place during a long drought.

Wheels of large diameter promote easy draught. The obliquity of the thrust of a wheel when it meets an impediment, or its tendency to push the body along instead of downwards, being inversely as the diameter, renders small wheels very prejudicial to roads. According to Telford, the load on each wheel ought not to exceed

one ton with a width of tire of four inches. For a vehicle mounted on springs a width of tire of two inches is in most cases sufficient to prevent undue wear of the roadway.

On roads little frequented, and on one upon which a layer of fresh material has just been spread, carts are apt to follow one another in line, on one part of the road, thereby causing deep ruts, sooner than would be the case if the whole breadth of the road were used impartially. To prevent this, it is sometimes advisable to place trestles or other obstructions on the road to divert the traffic from time to time.

*Rollers.*—Rollers have only of late years been introduced, owing probably to the expense attending their use. In newly-made roads and those undergoing repairs, the old and somewhat barbarous plan has been to turn over the traffic to the loose and rough surface of the road, and allow the wheels of carriages, carts, and pounding of the horses' feet to work in the broken stone, in course of a long time, to consolidate and so give some kind of a surface to the road. Not only is the damage to the vehicles very considerable during the process of settling the road, but from not properly rolling down the materials before the road is opened, the particles do not bind regularly nor effectively: a bad road is the result, needing constant repairs.

It is a great mistake to suppose that the heavier the roller the more compact will be the road. There are limits to the breadth of rollers as well as to the weights to be employed in them. Very heavy rollers passing over three to four feet of the roadway at each journey will either drive the metalling into the substratum, or force it out beyond the sides of the surface being rolled, upheaving the general formation intended for the surface of the road. Light rollers are not advocated for general road traffic, being practically of no use.

General Burgoyne has, from several experiments, given as a fair guide to be adopted for road-rollers a weight of 28 cwt. per foot lineal; so that, for rollers 3 feet wide, we should have a weight of 4 tons 4 cwt., and for a 4 feet roller, 5 tons 12 cwt., and so on.

A roller beyond  $5\frac{1}{2}$  tons in weight becomes almost unwieldy, unless steam-power is employed.

With horse-power, several horses labouring over a newly-laid road, the surface gets considerably disturbed. Rollers drawn by horses should be adapted so as to be hauled either backwards or forwards by unharnessing the horses, and not subject the road to be torn up or damaged by the rollers in the process of reversing.

For a roller 4 feet wide, and 4 feet 6 inches in diameter of barrel, suitable for most suburban roads of the metropolis, we may assume that six horses are required to do thoroughly the work required. The rolling should be from either side, and finishing off with the crest or centre portion of the road.

Steam road-rollers were first used in France, and patented by M. Lemoine, of Bordeaux, in 1859. They have been subsequently

used in England, and a patent has been taken out by Messrs. Clarke and Batho. This latter machine answered well in Calcutta, and was the first thoroughly practical machine answering its purpose in England. 15-ton steam-power rollers are much used. Great economy and rapidity in the finishing and construction are gained by the use of steam rollers. The noise attending their use, and the liability to frighten horses and so cause accidents, is a serious drawback.

*Stone Pavements.*—The history of stone pavements is a very long one. We have one of the oldest specimens in Pompeii, where the streets are laid in irregular slabs of stone and on which the grooves marked by the ancient chariot-wheels are still to be seen. Probably other cities could have boasted of pavement better than or as good as Pompeii, though they have no record of it to show at the present date.

In passing on to more modern records we find naught but boulders and roughly-laid pebbles to pave our ways, a vast improvement upon the old county roads: this was the *beau idéal* of pavements on the continent for centuries, and also in England.

It was long before the old boulder system could be superseded, and dressed stone, properly bedded, introduced. Dressing boulders was impracticable, and different kinds of stone were used in somewhat rough shapes; these were more successful for durability, for ease, and for comfort of travellers. Granite, in regularly dressed blocks was next used; and from the larger sized blocks of twelve to twenty inches in length, nine inches and more in depth, and eight to ten inches in width, present experience has reduced these dimensions to what is now called three-inch sets, with the proportions of one, two, and three, i.e. three inches in width, six inches in depth, and nine inches in length; well-rammed, gravelled, packed, and laid upon a solid impervious foundation. All drainage should go off to the side drains, and not through the joints of the stone into the substratum.

The three-inch width of stone gives the best foothold for horses, and has proved the quietest and best wearing of these roads.

Of the different kinds of stone used for pavement, only granite is now used in large towns. The hardest, most durable and economical have proved too slippery after several trials. Of these granites, we enumerate in this class the Welch, Penmaen Mawr, Guernsey, and Mount Sorrel. The Aberdeen granite, though softer, stands in high favour in the large towns of England, and after several years of wear and repacking, if not originally laid in depths beyond six inches, can be removed and laid down in streets of minor traffic than the main roads.

Economy is hereby secured; it should not, however, be at the first cost of the main thoroughfares.

Fifteen and a half years are given as the supposed duration of granite pavements in streets with heavy traffic, before consigning the materials to the store-yard. During this period or life of



fifteen and a half years, the wear in depth of the stones does not average more than two inches.

The value of the material removed from damaged and so-called worn-out roads may be put down at from 2s. to 2s. 6d. per yard.

Colonel Haywood has given us some valuable data on the duration and cost of granite pavements in the City of London. The appended tables, taken from his Reports, are most instructive, showing as they do thorough research into the details and workings of the divers systems adopted during a succession of years in the City of London.

*Wood Pavements.*—The claim for the earliest introduction of wood for pavements is made by Russia. In that country the blocks were used of hexagonal forms. In 1835 wood was laid down in Philadelphia and New York, and several experiments made of different forms and systems. It was in 1838 that Mr. D. Stead introduced it into England in the form of hexagonal and other blocks. The blocks were first laid on sand or gravel, and afterwards on concrete. Several patents were taken out by Stead and others between the years 1838 and 1845.

In 1838 Carey took out a patent for wood pavement. He used rectangular blocks at first, 12 to 14 inches in length, 9 inches in width, and 8 to 9 inches in depth. These dimensions were found to be excessively large, the blocks splitting across their lengths. Practice has now reduced the blocks to 9 inches in length, 6 to 8 inches in depth, and 3 to 4 inches in width. Interspaces of about  $\frac{1}{2}$  an inch between the blocks are given to allow of a foothold for horses; the spaces are filled in, gravelled, and rammed. The foundation for the wood pavements should be well rammed concrete curved to the intended surface of the road. Sand and gravel were used to form the bed for the wood until lately; water found its way into the sand through the joints of the wooden blocks; mud oozed out and displacement of the road resulted.

Carey's wood pavement has been tried in several streets in the city of London, and the experience gained extends over 35 years. The first trials of this plan of roadway were made in Mincing Lane in 1841, and in Gracechurch Street in 1842. The former was turned, relaid, and repaired, but was not renewed until after 19 years' wear; and in the latter street the duration was 11 years. Other pavements on the same principle were laid down in these streets; but in 1871-73 asphalt was substituted.

The Improved Wood or Nicholson Pavement has been introduced within the last four years from America. The plan of operations is to have a layer of sand or mortar laid 4 inches deep, dressed to the intended profile and cross-section of the road; and upon this bed two layers of one-inch deal planking, well tarred, are laid transversely and longitudinally. The tarred blocks, 9 inches long, 6 inches deep, and 3 inches wide, are laid upon the planks. Spaces

of  $\frac{3}{4}$  inch are allowed between the blocks, and filled in with boiling pitch and tar; ballast or clean broken gravel is rammed into the joints by means of a caulking-iron. Gravel is spread lightly over the surface of the road, and a thin layer of boiling tar over the gravel, and sand is sprinkled over all. The wheels of vehicles work the gravel, tar, and sand, into the surface of the road.

Amongst the various patented wood pavements in use in the city of London and elsewhere we find the following:—

Carey's Improved Wood, Asphaltic Wood, Mowlem and Co.'s, Ligno-Mineral, Henson's Street Paving Company's, Gabriel's, Norton's, Harrison's, and Wilson's.

The first cost of some of the systems of the wood pavements which have been tried in the city of London is given in tables in Colonel Haywood's Reports. Some of the results gleaned are appended hereto.

*Asphalte Pavements.*—Since the first successful experiments of asphalte paving for streets, laid in Paris in 1854, other cities and towns have tried some of the numerous modifications and preparations of the materials of the asphalte system of pavements. The chief sources from whence the asphalte is drawn are the Val de Travers, Seyssel, Montrotier in France, Maestu in Spain, and other places. Several streets were laid in Paris with this material between 1854 and 1869. In this latter year the first portion of road put down in London with asphalte was in Threadneedle Street, then in 1870 in Cheapside, and the system was gradually extended to various localities over several miles of roads.

The Val de Travers Compressed Asphalte Pavement appears to have had the greatest share of patronage shown to it of the different kinds laid down in London. The following is the method adopted:—The carriage-ways are constructed with a foundation of concrete of from 6 to 9 inches in thickness, according to the amount of local traffic. The asphalte rock is broken up and reduced to powder by exposure to heat in revolving ovens; it is then lodged in iron carts with close-fitting covers, and brought upon the ground, taken out, laid over the surface, and whilst hot, compressed with heated irons into a homogeneous mass without joints. The finished thickness of stuff is from 2 to 2 $\frac{1}{2}$  inches, according to the requirements of road traffic. The material is further compressed and consolidated by the action of the traffic by as much as 20 to 25 per cent.

The cost of the pavement laid in Cheapside with the Val de Travers Asphalte, is as under:—

					Per sq. yd.
					s. d.
Foundation concrete, 9 inches thick	..	..			1 9
Asphalte, 2 $\frac{1}{2}$ inches thick	..	..	..	..	16 3
Per square yard	..	..			18 0

With lesser thicknesses of asphalt the prices per square yard are proportionally decreased. The last appended Table from Colonel Haywood's Reports gives the formation of different roadways, cost, and maintenance.

The contract for maintenance of the roads mentioned in those Tables is for 16 to 17 years (excavation not included). The pavements to be given up as good as new. In the Metropolis generally the usual terms of payment under a contract for laying down wood pavement are:—On the completion of the work, 80 per cent.; at the end of one year thereafter, 10 per cent.; and at the end of the third year, the remaining 10 per cent. which is retained till then, by way of guarantee that the Company executing the work shall maintain it for three years.

In Manchester, asphalt pavements have proved dangerous from slipperiness, and have been removed and replaced by granite sets.

[TABLE No. XXIII.

X

TABLE No. XXIII.—DURATION OF GRANITE PAVEMENTS in some principal STREETS in the CITY OF LONDON, 1845-63.

Aberdeen Sets, 3 inches wide and 9 inches deep.

SITUATION.	Laid.		Relaid.		Taken up.		Duration.		OBSERVATIONS.
	Year.	1846	Year.	1853	Year.	1852	Years.	6	
Poultry	..	..	..	1853	{	1861	15		{Cost for repairs 2.66 per square yard per year.
Cheapside (portion)	..	{	1846	1853	{	1870	9		{Taken up for asphalt.
Cheapside (E. end)	..	1847	1853	1853	..	..	..		
St. Paul's Churchyard	..	1847	1853 and '58	1863	1863	1860	16		{Cost for repairs 3d. per square yard per year.
Ludgate Hill	..	1844	1853	1853	1860	1860	14		
Newgate Street	..	1846	1854	1854	..	..	..		Widened in 1848.
Skinner Street	..	1845	1848 and '56	1857	..	..	14		
Threadneedle Street, West	..	1848	1857	1857	1862	1862	..		
Fenchurch Street, East	..	1846	1852	1852	..	..	..		
" West	..	1845	1852	1852	1861	1861	16		
Leadenhall Street	..	{	1845	1852	{	1857	12		Relaid with one-third new stone.
Princes Street	..	1857	1863	1863	..	..	..		Sets 4 in. x 9 in.

Average duration, omitting the Poultry and the second pavement in Cheapside as exceptional instances, 15½ years.

The following data for BRIDGES are also given, in continuation of TABLE No. XXIII.

SITUATION.	Laid.	Relaid.	Taken up.	Duration.	OBSERVATIONS.
	Year.	Year.	Year.	Years.	
London Bridge .. ..	{ 1830	..	1842	12	} 6 Inch Sets.
Blackfriars Bridge .. ..	{ 1842	..	1851	9	
	{ 1840	..	1853	13	

TABLE No. XXIV.—ESTIMATED DURATION and Cost of GRANITE PAVEMENTS in principal CARRIAGE-WAYS in the CITY OF LONDON, 1871.

Aberdeen Granite Sets, 3 inches wide by 9 inches deep.

SITUATION.	Width of Street.	Daily Traffic, 24 Hours.	Duration.	First Cost per Square Yard.	Total Cost including maintenance, less old Stones.	Average Total Cost per Square Yard per Year.
	Feet.	Vehicles.	Years.	£.	£. d.	£. d.
Cheapside .. ..	30	11,900	15	16	24 4½	1 7½
Poultry .. ..	22	9,600	8	16	22 4	2 9½
Old Broad Street .. ..	24	2,600	20	16	20 11½	1 0½
Moorgate Street .. ..	32	7,400	15	16	20 7	1 4½
Lombard Street .. ..	17	2,600	20	16	21 4½	1 0½
Averages .. ..	..	..	15·6	16	21 11	1 7

CAREY'S WOOD PAVEMENTS in the CITY OF LONDON, consisting of large blocks.  
Duration and Cost.

STREET.	Date when laid New.	Duration.	First Cost per Square Yard.	Cost for Repairs per Square Yard.	Total Average Cost per Square Yard per Year
<b>LARGE TRAFFIC.</b>					
Cornhill .. .. .	{ May, 1855 { July, 1865	Years Months. 10   2 6   8	£. d. 12 2 11 6	£. d. 17 4½ 8 9½	£. d. 2 11 3 0½
Gracechurch Street .. .. .	{ Nov., 1853 { June, 1865	11   7 6   0	12 8 11 6	17 1½ 6 11	2 6½ 3 0½
Lombard Street .. .. .	{ May, 1851 { Sept., 1860	9   4 10   7	9 6 9 2	6 0 20 2	1 7½ 2 9
<b>SMALL TRAFFIC.</b>					
Lothbury .. .. .	{ May, 1854 { Aug., 1866	12   3 6   1	12 6 12 6	28 4½ 3 5½	3 4 2 7½
Mincing Lane .. .. .	{ July, 1841 { Aug., 1860	19   1 13   0	14 4 9 2	13 4 22 6½	1 5½ 2 5½
Bartholomew Lane .. .. .	{ May, 1854 { Aug., 1866	12   3 5   5	12 6 12 6	17 5½ 3 11½	2 5½ 3 0½

Cost for Foundations included, but no Excavation. No deduction is made for old Material.

Of the above PAVEMENTS we get the following averages:—

Averages for Carey's Pavements.	Duration.	Total Cost per Square Yard per Year.
	Years.	s. d.
Streets of large traffic .. .. .	9·05	2 7½
„ small traffic .. .. .	11·33	2 4½
General average .. .. .	10·19	2 6

### Cost of other SYSTEMS.

		Laid.	Square Yard First Cost.
			s. d.
Improved Wood ..	King William Street ..	1873	18 0
„ ..	Ludgate Hill .. .. .	„	18 0
„ ..	{ Great Tower Street and Seething Lane .. .. }	„	16 0
„ ..	Bartholomew Lane ..	1871	16 0
Carey's Wood ..	Bartholomew Lane ..	1872	12 6
„ ..	Houndsditch .. .. .	1874	13 6
Mowlem's Wood ..	Duke Street .. .. .	1873	15 3
„ ..	Houndsditch .. .. .	1874	17 0
Henson's Wood ..	Oxford Street .. .. .	1875	12 0
„ ..	„ .. .. .	„	14 0
Asphaltic Wood ..	Bristol .. .. .		14 6

[CITY

## CITY OF LONDON; COST OF ASPHALTE PAVEMENTS LAID AND MAINTAINED BY CONTRACT.

Con- crete.	Asphalte. Inches.	Completed.	Kind.	Locality.	Period of Main- tenance.	First Cost per Square Yard.			Contract Cost for Maintenance per Square Yard.	Total Cost per Square Yard.	
						Found- ation.	Asphalte.	Total.		Total.	Per Year.
					Years.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
9	2½	Dec. 1870		Cheapside .. ..	17	1 9	16 3	18 0	{ 2 years free { 15 " 1s. 6d.	40 6	2 4
9	2½	" 1870		Poultry .. ..	17	1 9	16 3	18 0	" "	40 6	2 4½
6	2	Mar. 1871		Old Bond Street ..	17	1 9	14 3	16 0	{ 2 years free { 15 " 9d.	27 3	1 7½
9	2½	July, 1871		Gracechurch Street	17	1 9	15 3	16 0	{ 2 years free { 10 " 1s.	32 0	1 10½
6	2	Aug. 1871		Finabury Pavement	17	1 9	14 3	16 0	{ 2 years free { 15 " 9d.	27 3	1 7½
6	2	" 1871		Moorgate Street ..	17	1 9	14 3	16 0	" "	27 3	1 7½
9	2½	April, 1871		Queen Street ..	17	1 9	14 3	16 0	" "	27 3	1 7½
9	2	Sept. 1871		Moorgate Street ..	17	2 8	13 4	16 0	{ 2 years free { 15 " 9d.	27 3	1 7½
9	2	May, 1871		Lombard Street ..	17	2 8	13 4	16 0	" "	27 3	1 7½
9	2	Mar. 1872		Cornhill .. ..	17	2 8	12 4	15 0	" "	26 3	1 6½
6	2	Aug. 1873		Mincing Lane ..	17	1 9	10 3	12 0	" "	23 3	1 4½
9	2½	..		Moorgate Street } S. end .. ..	18	2 8	10 6	13 2	{ 3 years free { 15 " 1s. 4½d.	33 9	1 10½
6	1½	..		George Yard ..	10	1 9	10 3	12 0	10 years free	12 0	1 2½



# INDEX.

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## A.

**Abolition**—of Turnpike tolls, to be deemed improvement of highways, 276, 278

**Abstract**—of Accounts, to be made and laid before parliament, in respect of highway board expenses, 107, in respect of expenses of turnpike trustees, 267

**Accounts**—of Highway authorities, audit of, 189—of Highway boards, appeal against items in, 159, inspection of, by ratepayers, 157, main road accounts to be kept separately, 204, main road accounts to be sent to county authority, 204, and to be audited, 204, statement of accounts to be in form prescribed by local government board, 108, statement to be sent to local government board, 104, and to members of board, 157, 195, and to overseers, 157, and to parliament, 107—of Officers of highway board, 108—of Surveyors of highways, 149—of Treasurer of highway board, 98—of Turnpike trust, abstract to be laid before parliament, 267, audit of such accounts 265, inspection of them by ratepayers, 264—of Waywardens, 153

**Accretions**—from the Sea, annexed to adjoining parishes, 132

**Action**—for Damage by locomotive, 235, 243—for Non-repair, limitation of time for commencing, against highway board, 100

**Addition**—of Parishes to highway district, 116—of Site of toll-house and roads, 263

**Adjoining County**—Highway district extending into, 205—Parishes in, may be added to highway district, 116—Turnpike road extending into, 204

**Adjournment**—of Appeal to quarter sessions, 219, 254—of Audit, 192

**Adoption**—of Bridges, by county authority, 207—of Highway Act, restrictions as to, 85—of Parish roads, by council of borough, 122—of Highway board powers, by rural sanitary authority, 182

**Advertisement**—of Application for confirmation of byelaws, 216, 252—of Discontinuance of unnecessary highway, 210—of Time for sending in claims in respect of debt of turnpike trust, 273

**Agreement**—for Breaking up highway to lay gas-pipes, validity of, 99, 175—for Maintenance of road by urban sanitary authority, 277—for Repair of highways, stamp duty on, 140, for repair of turnpike road by highway board, 275

---

— see also *Contract*.

**Agricultural Implements or Produce**—Carts, &c., conveying, exempt from toll, 115

**Allotments**—of Waste lands, transferred to highway board, 94

**Allowance**—of Accounts, by auditor, see *Audit*—of Highway rate, by justices, 152—to Outgoing surveyor of highways, on establishment of highway board, 121

**Alteration**—of Highway districts, 116, costs of parish applying to be removed from district, 137, rural sanitary and highway districts to be made coincident upon alteration of district, 181—of Number of waywardens, 137—of Orders of turnpike trustees, 276, 277—of Part of highway district, residue not affected by, 138—of Rural sanitary district after rural authority has become highway board, 185

**Annexation**—of Accretions from the sea to parishes, 132—of Extraparochial places to parishes for all civil parochial purposes, 132, for highway purposes, 110—of Outlying parts of parishes to highway districts, 111

**Annual**—Meeting of Turnpike trustees, 285—Returns as to local taxation, 104—Statements of accounts of highway board, to be sent to local government board, 104, and abstract laid before parliament, 107, statements of accounts of turnpike trustees, 267, 285

**Appeal**—against Contribution of parish to district fund, 160—against Discontinuance of unnecessary highway, 211—against Expenditure of highway board, 159—against Highway rate, to special sessions, 157—against Order of highway board, 159, against order on parish surveyor to contribute to expenses of turnpike road, 258, against order rendering highway repairable by the parish, 113—against Penalty, 124—against Poor rate, to special sessions, 158—against Rateable value of property in parish as ascertained by justices, 151—against Requisition to throw site of toll house into road, 272

**Appeal—continued.**

—Adjournment of, 219, 254—Bail, 219, 254—Costs, 163, 220, 255—Disqualification of justices from acting in certain cases, 115—Grounds of appeal to be stated, 218, 253—Jury may try issues of fact, 162—Notice of appeal, 160, 218, 253—Recognizance, 219, 254—Reference to arbitration, 161—Special case, 219, 254

**Appearance**—of Highway board, on proceedings to compel repair of road, 102

**Application**—to County authority, to declare highway a main road, 202, to invest rural sanitary authority with highway board powers, 182—to Justices, to discontinue unnecessary highway, 209—to Local government board, to prevent highway from being a main road, 203—of Principal Act to Highway Act, 1862, 118

**Appointment**—of Chairman of highway board, 177—of Collector of highway rates, 148—of District auditor, 189—of District surveyor, by two or more highway boards jointly, 186—of Officers by highway board, 96, how appointments are to be made, 148, notice of intention to make appointments to be given, 97, quarter sessions may make appointment in default of highway board, 165—of Overseers, 92—of Person to perform duty of defaulting highway authority, 197, of person to repair highway, on default of highway board, 102—of Surveyors of highways, 91, 92, of surveyor for place not maintaining any highways, 211—of Waywardens, 191, certificate of appointment of waywarden to be produced, 138, re-appointment of waywardens, 94

**Apportionment**—of Turnpike debt by local government board, 279

**Approaches**—to County bridges, repair of, 169

**Approval**—by Justices, to order of justices of another county, 117, 136—of Quarter sessions, to loans to be raised by highway board, 166, form of approval, 168, general orders as to applications for such approval, 168, approval to rural authority becoming highway board of district partly in another county, 184

**Arbitration**—Appeal against expenditure, &c., of highway board may be referred to, 161—Common Law Procedure Act provisions as to, 293–296

**Assessment**—of Debts of turnpike trust by local government board, 277, apportionment of the debt, 279—to Highway rate, 155, form of, in case of exempted property, 153, 154

**Assistant**—Surveyor, highway board may appoint, 96, his duties, 98

**Assizes**—Justices may order indictment for non-repair to be preferred at, in certain cases, 103

**Asphalte**—Pavements, 304

**Attendant**—Locomotive on road to be preceded by, 249

**Audit**—of Highway accounts, 189, accounts of expenses of main roads to be kept separately, 204, expenses of audit, 194, remuneration of auditor, 194—of Poor law accounts, 190, adjournment of, 192, appeal to local government board, 194, appeal to Queen's Bench, 193, certiorari to remove disallowances, &c., 193, notice of audit, 189—of Turnpike trust accounts, 265, expenses of audit, 265

**Auditor**—Appointment of, by local government board, 189—Powers of, under poor law, 190—Remuneration of, 194

## B.

**Bail**—Appellant may be released on, 219

**Balance**—of Turnpike trust funds, compensation to officers, when payable from, 266, payment of to parishes, 264, when balance is to be carried to district fund, 271

**Balances**—Outgoing surveyor of highways to pay over, to highway board, 121

**Bank**—of River, annexed to adjoining parish, 132

**Bed**—of River, annexed to adjoining parish, 132

**Bicycles**—County authority may make byelaws as to, 214

**Board for repair of Highways**—Appointment of, 199, board not to be appointed for parish in highway district, 119—Consent of, to inclusion of parish in highway district, not to be required, 199

—— room—Provision of, by highway board, 98

**Bonded Debt of turnpike trust**—Apportionment of, 278—Assessment of, 276

**Books**—of Highway board, inspection of, by ratepayers, 157—of Turnpike trustees, inspection of, by ratepayers, 264

**Borough**—Adoption of parish roads by council of, 122—Definition of, 79, 220, 255, when not included in urban sanitary district, 222—Highway district, when not to include any part of a borough, 86, when highway parish is partly within a borough, remainder may be included in highway district, 131, 132

- Borrowing Powers**—of Highway board, 166, borrowing money for abolition of turnpike tolls, 278, how loans are to be charged, 189
- Boundaries**—of Highway and Rural sanitary districts, when to be made coincident, 181
- Breaking up**—Highway, to lay gas and water pipes, 99
- Bridges**—Adoption of, by county in certain cases, 207—Building of, to be deemed improvement of highway, 170—Contracts by highway boards to repair, 143—Contributions by county authority towards cost of erection of, 207—County, see *County Bridges*—on Disturnpiked road, repair of, 269—Enlargement of, to be deemed improvement of highway, 170—when Hundred is liable to repair, how expenses of main roads are to be defrayed, 205—in Kent, hundred bridges to be county bridges, 281—Locomotives passing over, byelaws regulating them, 250, damage done by such locomotives to be made good by owners, 232, restrictions on such use of locomotives, 231—Tolls to be charged on locomotives by trustees of, 225
- Building**—on Highway, penalty for erecting, 171—on Turnpike or disturnpiked road, penalty for erecting, 260
- Byelaws**—as to Bicycles, 214—as to Hours during which locomotives may pass along roads, 250—as to Gates on highways, 213—as to Locking of waggon wheels, 213—as to Locomotive, 250, 251—as to Tires of waggon wheels, 213—as to Width of waggon wheels, 213  
 — Confirmation of, by local government board, 216, 252—Fines may be imposed by, 214—Mode of making, 212—Publication of notice of intention to apply for confirmation of, 216, 252—Scope of, 213

## C.

- Carriage**—of Materials, provisions of Principal Act as to, not to apply in highway district, 120
- Cartage**—of Materials for repair of highways, contracts for, 139
- Carts**—Drivers riding on, upon turnpike road, 264—Exemption of, from toll, when carrying manure or road materials, 115—Names of owners to be painted on, 235
- Casting Vote**—of Chairman of highway board, 177
- Casual Vacancy**—on Highway board, 177
- Cattle**—Straying on highway, 144, on turnpike road, 274

**Centre**—of Turnpike road, meaning of, 261

**Certificate**—by Auditor, as to sum disallowed or surcharged, 191—by Bridge surveyor, as to sufficiency of bridge to carry locomotive, 231—by Chairman of vestry or other meeting, as to election of waywarden, 138—by County surveyor, as to condition of new bridge, 207, as to condition of old bridge, 206, 207, as to maintenance of main road, 201—by Justices, as to appointment of waywarden, 138

**Certified Sums**—Recovery of, by auditor, 190, limitation of time for recovery of, 192

**Certiorari**—for Auditor's disallowances, &c., 193—for Order on highway board to hold first meeting, 117—for Orders of justices, 117, time for applying for certiorari to remove such orders, 88, 93

**Chairman** of Highway board—Appointment of, 177—Casting vote of, 177—Enforcement by, of payments from overseers, 155

**Charge**—on Highway rates, 166, form of charge, 169—see also *Mortgage*.

**Church**—Meaning of, 167—Notice of loan to be raised by highway board to be affixed to door of, 167

**Clerk** of Highway board—Appearance of highway board before justices by, 102—Appointment of, by highway board, 96, by quarter sessions on default of highway board, 165—Deputy, 98—Duties of, 98—Enforcement by, of payments from overseers, 155—Service of notices, &c., on, 120—Statement of accounts to be transmitted to local government board by, 104

—of the Peace—Copy of order declaring highway to be a main road to be deposited with, 202—Notice of dispute as to liability to repair to be given to, 197, notice of intention to borrow money to be given to, 167, notice of proposal to form highway district to be given by, 80, notice of proposed confirmation of order forming highway district to be given by, 82, notice of orders forming highway district to be given by, 84

**Collection**—of Separate rate for general expenses of rural sanitary authority, 187

**Collector** of Highway rates—Appointment of, 148—Powers of, for levying rates, 148—Security to be given by, 148, 149

**Combination**—of Highway boards, for appointment of district surveyor, 186—of Townships, &c., into one highway parish, 87, extension of powers in respect of such combinations, 130

- Commercial Roads Continuation Act, 1849**—Saving for tolls leviable under, 227
- Commissioners Clauses Act**—Incorporation of part of, 171—Provisions of, as to mortgages, 287-293
- Committal**—of Officers of highway board, on refusal to account or deliver up books, &c., 109
- Common Law Procedure Act**—Provisions of, as to arbitrations, 293, application of such provisions to arbitrations under Highway Act, 162
- Company**—Turnpike trustees not disqualified by being shareholders in, 263, 264
- Compensation**—to Officers, on expiration of turnpike trust, 266, how if road is in two counties, 270
- Composition**—for Expenses caused by extraordinary traffic, 208—for Money due to highway board by officer, 109
- Confirmation**—of Byelaws by local government board, 216, 252, publication of notice of intention to apply for confirmation, 216, 252—of Provisional order of justices forming highway district, 82, of provisional orders of local government board, 216, of provisional order declaring highway a main road, 202
- Consent**—of Board for repair of highways, to inclusion of parish in highway district, not required, 199—of Highway board, to erection of fences, 123—of Justices, to borrowing of money by highway board, 166
- Consequences**—of Formation of highway district, 94
- Constitution**—of Highway board, 89
- Construction**—of Highway Acts, 118, 127  
———of Roads, 297
- Constructive Situation**—of Local government district in or adjoining highway district, 176
- Contiguous**—Places, in different counties, may be constituted highway district, 136
- Continuance**—of Locomotive Acts, 236, 251—of Turnpike Acts, 284  
———in Office, of surveyor of highways on formation of highway district, 133, of waywardens, 94, 198
- Continuing Offence**—Erection of fence on highway is not, 172

**Contracts**—by **Highway board**, for materials for repairs, 173, for repair of highways, 173, to repair certain highways, 142, members of highway board not personally liable on contracts, 90, stamp duty on contracts, 140—by **Persons** liable to repair roads, to repair highway for highway board, 143—by **Surveyor of highways**, 139—by **Urban sanitary authorities** to undertake repair of roads, &c. 143—by **Waywardens**, 139—see also *Agreement*.

**Contributions**—to **District fund**, appeal against, 160, limitation of, 154, precepts for, to be issued by highway board, 151, rateable values of parishes to be the basis of, 149, recovery of, from overseers or waywardens, 155—to **Expenses of main roads**, from county rate, 200, contribution may be withheld in certain cases, 205, contribution to expenses of rural sanitary authorities, 186, recovery of such contributions, 187—to **Improvements of highways** in other districts or parishes, 170—to **Repair of turnpike road**, payable by highway board, 142, 258, 270, by surveyor of highways, 258

**Contributory Places**—in **Rural sanitary districts**, 186

**Conversion**—of **Road** into stoned road, to be deemed an improvement, 170

**Copy**—of **Order** forming highway district receivable in evidence, 135

**Corporation**—**Highway board** to be, 89

—————of **London**—**Byelaws** by, as to locomotives, 250—**Licence** by, to use large locomotive, 248

**Cost**—of **Construction and Repair** of roads and pavements, 306-310

**Costs**—of **Appeal** to quarter sessions against conviction or order, 220, 255, against expenditure, &c., of highway board, 163—of **Application** by parish to be excluded from highway district, 137—of **Compelling** highway board to hold first meeting, 118—of **Indictment** for non-repair of highway, ordered by county authority, 198, ordered by justices at petty sessions, 103, of indictment for obstruction of highway, 156, 187—of **Opposition** to bill in parliament, not payable by highway board, 156, 188

**Council of Borough**—**Adoption** of parish roads by, 122—**Byelaws** by, as to locomotives, 250—**Consent** of, to inclusion of borough in highway district, 86—**Licence** by, to use large locomotive, 248—see also *Town Council*.

**County**—**Contiguous places** in different counties may be constituted highway district, 136—**Definitions** of, 78, 127, 220, 255—**Division** of, into highway districts, 82—**Highway district** partly in different counties to be treated as several districts, 1205—**Jurisdiction** of



**County—continued.**

justices when highway district partly situate in different counties, 164—Parish partly situate in, when deemed to be situate in, 87—Turnpike road partly in different counties to be treated as several roads, 204

—Authority—Application by, that disturnpiked road may not become, or that highway may cease to be, a main road, 203—Bridges may be adopted by, 207, contributions may be made by, towards cost of erecting bridges, 207—Byelaws may be made by, as to bicycles, 214, as to gates on highways, 213, as to locking of waggon wheels, 213, as to locomotives, 250, 251, as to tires of waggon wheels, 213, as to width of waggon wheels, 213, fines may be recovered under such byelaws, 214—Definition of, 220, 255—Formation of highway districts by, 82—Highway authority may be compelled to perform duty by, 196, highway and rural sanitary districts, when to be made coincident by, 181—Indictment may be ordered to be preferred by, 198—Licences by, for locomotives, 250, licence to use large locomotive may be given by, 248—Main road accounts to be sent to, 204, form of accounts as to main roads to be prescribed by, 204—Order of, declaring highway a main road, 202, confirmation of the order, 202, copy of order to be deposited with clerk of the peace, 202, order declaring main road partly repairable by a hundred, 205, order on highway board to repair highway, 197, how if liability to repair is disputed, 197—Rural sanitary authority in certain cases may be invested with highway board powers by, 183—see also *Justices, Quarter Sessions*.

—Bridges—Adoption of certain bridges as, 207—Approaches to, by whom to be repaired, 269—Borrowing money for rebuilding, 280—Bridges on disturnpiked roads to be, 269—Contributions towards erection of, 207—Highway board may repair, under contract, 143—Hundred bridges in Kent to be, 281—Repair of highways over, 269—Superintendence of erection of, 207

—Rate—Bridges may be erected partly at the cost of, in certain cases, 207—Costs of justices in maintaining validity of order payable from, 137—Expenses of main roads to be partly paid from, 199, 200, limitation of time for making such payments, 200, payments in respect of money borrowed not to be included, 201—Fees for locomotive licences to be carried to, 251

—Surveyor—Certificate of, as to condition of new bridge, 207, as to condition of old bridge, 206, 207, certificate that main road is properly maintained, 201

**Court**—of Summary jurisdiction, definition of, 217

**Creditors of Turnpike trust**—Distribution of funds among, 283—**Ex-**  
tinction of debts of, 273, 282, 284

**Cylindrical Wheels**—Locomotives to have, 247, locomotive not  
having, to be charged extra toll, 226, weight allowed to locomotive  
having such wheels, 228—**Meaning of**, 226

## D.

**Damage**—to Bridge by locomotive, to be made good by owner, 232—to  
Road by extraordinary traffic, recovery of expenses caused by, 208

**Day**—of Formation of highway district, 133, 134

**Debts**—of Highway board, transferred to rural sanitary authority,  
184—of Surveyors of highways, transferred to highway board, 94,  
to rural sanitary authority, 184—of Turnpike trust, assessment of,  
by local government board, 277, extinction of such debts, when  
unclaimed, 273, 282, 284, highway board may discharge such debts,  
275, 276

**Declaration**—Auditor may require officer to make, 192

**Default**—of Highway authority, in keeping and transmitting accounts  
of expenses of main roads, 205, in repairing highways, 196—of  
Highway board in appointing officers, 165, in holding first meet-  
ing, 117

**Defect**—in Qualification of member of highway board, not to invali-  
date proceedings, 90

**Definitions**—Borough, 79, 220, 255—Centre of turnpike road, 261—  
Contributory places, 186—County, 78, 127, 220, 255—County  
authority, 220, 255—Court of summary jurisdiction, 217—Cylin-  
drical wheels, 226—Final order, 138—Highway Acts, 79, 127,  
highway area, 201, 202, highway authority, 221, highway board,  
79, 221, highway district, 79, 220, highway parish, 127, 221, highway  
rate, 127—Improvements of highways, 170, 276, 278—Local Act,  
Turnpike Act when not included in the term, 260—Locomotive, 223,  
256—Metropolis, 223, 256—Obstruction of highway, 172—Parish,  
79, 87, 88—Person, 223, 256—Petty sessional division, 223—Place  
separately maintaining its own highways, 128—Poor law parish,  
127—Principal Act, 79—Provisional order, 138—Quarter sessions,  
223, 256—Rural sanitary authority, 221, 222, rural sanitary  
district, 221, 222—Summary Jurisdiction Acts, 217—Urban  
sanitary authority, 222, urban sanitary district, 221, 222—Town,  
86—Union, 222

**Deposit**—of Rubbish, &c., on highway, 171

**Deputy**—Clerk to highway board, 98

**Disallowances**—Appeal against, 193, 194—Auditor may make, 190  
—Remission of, 195

**Discontinuance**—of Unnecessary highways, 140, 208, appeal against discontinuance, 211, highway may subsequently be made repairable at public expense, 210

**Disqualification**—of Justices, from acting on certain appeals, 115—of Officers, from holding more than one office, 97

**Dissolution**—of Highway district, 116, repair of highways thereafter, 117

**Distress**—for Money due from officer of highway board, 109—for Sums payable by overseers or waywardens to highway board, 156

**District**—see *Highway District*.

———**Fund**—Balance of funds of expired turnpike trust to be carried to, 271—Contributions of parishes to, to be based on their rateable values, 149, contributions to repair of turnpike road to be charged on, 270—Disturnpiked road expenses charged on, 268—Expenses of highway board to be paid from, 187, 188—Loans to be charged on, 189—Salaries of officers to be charged on, 149—Turnpike road may be repaired at cost of, 275

———**Surveyor**—Appearance of highway board before justices by, 102—Application by, to justices, to render private road repairable by the parish, 114—Appointment of, by highway board, 96, appointment by quarter sessions on default of highway board, 165, joint appointment by two or more highway boards, 186—Duties of, 98—Estimate of expenses to be made by, 100—Exemption of, from turnpike tolls, 114—Service of notices, &c., on, 120

**Disturnpiked Roads**—Bridges on, to become county bridges, 269—Encroachments on, 260—to be Main roads, 199, except in certain cases, 203—Maintenance of, by highway board, 268—Materials for repair of, 268, 269—Parliamentary return as to, 204—Railway Clauses Act, how applied to, 274

**Diversion**—of Highways repairable under Local Acts, 122

**Divided Parishes Act**, 111

**Division**—of Highway districts, 188

- Driftway**—Meaning of, 114—Repair of, may be undertaken by the parish, 114
- Driver**—of Cart, &c., on turnpike road, when not liable to penalty for riding on cart, 264
- Duty**—of Assistant surveyor, 98—of Clerk to highway board, 98—of District surveyor, 98—of Highway authority, county authority may enforce performance of their duty, 196, duty of highway board, 99, penalty on surveyor of highways for neglect of duty, not to apply to highway board, 119—of Surveyors of highways, transferred to highway board, 95—of Treasurer of highway board, 98

## E.

- Easements**—Purchase of, by highway board, 175
- Election**—of Surveyors of highways, by justices, 92, by vestry, 91, 92—of Waywardens, defect in election not to invalidate proceedings of highway board, 90, first election to take place on day appointed by justices, 134, justices to provide for election where no surveyors or waywardens have previously been elected, 131, regulations as to election, 91
- Encroachments**—on Disturnpiked roads, 260—on Highways, 171—on Turnpike roads, 260
- Enforcement**—of Duty of highway authority, 196—of Orders of quarter sessions, 162—of Payments by overseers and waywardens to highway board, 155
- Engines**—Erection of, near highways, restricted, 239—for Ploughing, restrictions on use of, near highways, 240
- see also *Locomotives*.
- Enlargement**—of Bridge, improvement of highway includes, 170
- Estimate**—of Expenses of highway board, district surveyor to make, 100, of expenses of turnpike trust, 267, 285—of Loan proposed to be raised by highway board, 166
- Evidence**—of Exemption from highway rates, 154—of Formation of highway district, 88, 135—of Proceedings of highway board or committee, 90—of Publication of highway rate, production of rate book not sufficient, 153—of Service of notices, &c., issued by highway board, 146
- Ex-officio**—Guardians, justices when to be, 89—Waywardens, justices to be, 89, qualification of, 147

**Excluded Part**—of Highway parish in a borough, may be included in highway district, 131, 132—of Parish, highway parish may be formed of such part, 129, urban sanitary district to include such part, for highway purposes, 129, when waywardens are to be elected for such part, 129

**Exemption**—from Highway rates, Highway Acts do not affect, 153, evidence of exemption, 154—from Turnpike tolls, of carts, &c., carrying manure or road materials, 115, of district surveyor, 114, of waggons drawn by locomotives, 234

**Expenditure**—of Highway board, appeal against, 159, appeal may be referred to arbitration, 161

**Expenses**—of Audit of accounts of highway boards and surveyors of highways, 194, of audit of turnpike accounts, 265—of Extraordinary traffic, composition for, 208, recovery of, 208—of Highway boards, charged on district fund, 149, 187, charged on parts of district, 188, estimate of their expenses to be made by district surveyor, 100, summary proceedings for recovery of expenses by highway board, 216, 252—of Main roads, accounts of, 204, audit of such accounts, 204, such expenses to be partly paid from county rate, 199, 200—of Provisional order declaring disturnpiked road or highway not to be a main road, 204—of Repair of highways formerly charged on parishes separately, 150, of repairs of road, under order of justices, 102—of Rural sanitary authority with highway board powers, 185, mode of defraying their expenses under Public Health Act, 185, 186—of Trial of liability to repair, by indictment, 198

———see also *Costs*.

**Expiration** of Turnpike trust—Balances may be paid over to parishes, 264, when such balances are to be carried to district fund, 271—Compensation when payable to officers, 266, how if road is in two counties, 270—Extension of lease of tolls, 277, extension of time for holding meetings, 272—Extinction of unclaimed mortgage debt, 273, 282, 284—Meetings to be held by trustees, 262—see also *Disturnpiked Roads*.

**Extent**—of Locomotive Acts, 245—of Powers of justices, 138

**Extension**—of Lease of turnpike tolls, 277

**Extinction**—of Unclaimed mortgage debt of turnpike trust, 273, 282, 284

**Extraordinary—Meeting of highway board, 176—Traffic, composition for expenses caused by, 208, recovery of expenses caused by such traffic, 208**

**Extra-parochial Places—Annexation of, to parishes for all civil parochial purposes, 132, for highway purposes, 110—Justices may deal with, 132**

## F.

**Fees—for Locomotive licences, 251**

**Feigned Issues—Trial of, 163**

**Fence—Encroachment on highway by, 171—Landowner not liable to repair highway by reason of erection of, with consent of highway board, 123**

**Final Order—Approving order of justices of another county, 136—Declaring highway a main road, 202—Definition of, 138—for Formation of highway district, 82, copy of such order receivable in evidence, 135, election of waywardens to be provided for by the order in certain cases, 131, time for first meeting of board to be specified on the order, 133**

**Fine—Byelaws of county authority may impose, 214—Summary proceedings for recovery of, 216, 252**

**Fires—near Highway, when prohibited, 240**

**First Election—of Waywardens, day appointed for, 134**

———**Meeting—Appointment of officers of highway board at, 96—Default of highway board in holding, 117—Formation of district to date from, 133—Time for holding, 133, 176—Transfer of powers &c., at, 94**

**Form—of Approval of quarter sessions to loan to highway board, 168—of Mortgage, 171, 178—of Notice of proposal to form highway district, 125, or to confirm provisional order forming district, 125—of Statement of accounts, local government board may prescribe, 108—of Transfer of mortgage, 171, 179**

**Formation of Highway districts—Consequences of, 94—Evidence of, 88, 135—Final order for, 82, election of waywardens to be provided for by such order in certain cases, 131—First meeting of highway board to be deemed to be the day of, 133—Objections to validity of, when not to be taken, 88—Proposal for, 81, notice of intended**

**Formation of Highway districts—continued.**

proposal for, 80, form of notice of proposal, 125—**Provisional order** for, 82—**Publication of order** for, in gazette, 84, publication made permissive, 135—**Regulations** as to, 82—**Restrictions** on, 85—**Rural sanitary and highway districts**, when to be made coincident, 181—**Several districts** formed by one order, 127—**Transfer of property**, powers, &c., upon, 94, 95—**Validity of order** for, 135

**G.**

**Gas**—Company supplying gas to turnpike road, trustees may be shareholders in, 263—**Pipes**, agreement as to breaking up highway for laying, 99

**Gates**—on **Highways**, county authority may make byelaws as to, 213, urban sanitary authority may remove such gates, 213, 214

**Gazette**—Order forming highway district to be published in, 84, publication made permissive, 135

**General**—**Expenses of rural sanitary authorities**, 185, 186—**Orders of quarter sessions**, as to applications for approval to loans to highway boards, 168—**Turnpike Acts**, exemptions from toll contained in, 115, list of acts, 257

**Grounds**—of **Appeal to quarter sessions**, 218

**Guardians**—**Justices**, when to be ex-officio, 89—**Recovery of contributions** by, 187

**H.**

**Hamlets**—Combination of, into one highway parish, 87

**Highway Act, 1835**—**Application of**, to **Highway Act, 1862**, 118, to highways under **Local Acts**, 122

———— **Act, 1862**, 78–125

———— **Act, 1864**, 126–179

———— **Acts**—**Definition of** 79, 127—**Secretary of State's powers**, &c., under, transferred to local government board, 280

———— **Area**—**Definition of**, 201, 202

———— **Authority**—**Application by**, to render highway a main road, 202—**Audit of accounts of**, 189—**Definition of**, 221—**Enforcement of performance of duty of**, 196, person may be appointed by county authority to perform their duty, 197—**Main road accounts**, how to be kept by, 204, audit of such accounts, 204, copies

**Highway Authority—continued.**

of them to be sent to county authority, 204, default in keeping such accounts, 205—Notice of intended sale of toll-house to be given to, 271, 281

————— **Board**—Accounts of, audit, 189, inspection of accounts by ratepayers, 157, statement of accounts to be sent to local government board, 104, and abstract of statement laid before parliament, 107, statement of accounts to be sent to members of board, 157—**Appearance of**, before justices, 102—**Application by**, to render highway repairable by parish, 144—**Audit of accounts of**, 189—**Borrowing money by**, 166—**Chairman of**, 177—**Consent of**, to erection of fences, 123—**Constitution of**, 89—**Contracts by**, to repair certain highways, 142—**Contributions by**, to improvements in other districts, 171, to repairs of turnpike road, 258, 270—**Default of**, in holding first meeting, 117, in repairing highway, 100—**Definition of**, 79, 221—**Disturnpiked roads to be maintained by**, 268—**District surveyor may be appointed by two or more boards jointly**, 186—**Duties of**, 99—**Enforcement of payments from overseers and waywardens by**, 155—**Expenditure of**, may be appealed against to quarter sessions, 159—**Expenses of**, to be charged on district fund, 187—**First meeting of**, formation of district to date therefrom, 133, place and time for holding first meeting, 133, 176—**Improvements may be made by**, 166—**Incorporation of**, 89—**Justices to be members of**, 89—**Lands may be purchased and held by**, 89—**List of boards**, 106—**Name of**, 89—**Officers to be appointed by**, 96, accounts to be rendered by officers to the board, 108, quarter sessions may appoint officers on default of board, 165—**Order of**, may be appealed against to quarter sessions, 159, orders for payment of money, how to be executed, 177—**Penalty on surveyor for neglect of duty**, not to apply to, 119—**Personal liability of members**, 95, saving for, 90—**Precepts of**, for contributions of parishes, 151, execution of precepts, 177, recovery of amounts of precepts, 155—**Proceedings of**, to be regulated by rules in schedule, 91, schedule of rules, 176—**Quorum at meetings of**, 177—**Repair of highways by**, 99, enforcement of repair, 100—**Rural sanitary authority may become**, in certain cases, 182—**Sale of exhausted parish lands by**, 94—**Seal of**, 89—**Service of notices, writs, &c., on**, 120—**Sheriff not to act as member of**, 89—**Surveyors of highways superseded by**, on formation of district, 94, 122—**Transfer of powers, property, and duties to**, on their establishment, 94, transfer of powers &c. of, to rural authority, 184—**Turnpike road may be repaired by**, under agreement with persons liable to repair, 142, under agreement to discharge the



**Highway Board—continued.**

debt of the trust, 275, 276, voluntarily, 275—**Vacancies** on, not to invalidate proceedings, 89—**Vice-chairman** of, 177—**Waywardens** to be members of, 89

———— **District**—**Alteration** of, 116, costs of parish applying to be removed from district, 137, alteration of part of, not to affect residue, 138—**Borough**, when not to be included in, 86—**Contiguous** places in different counties may be formed into, 136—**Definition** of, 79, 220—**Dissolution** of, 116—**Division** of, 188—**Evidence** of formation of, 88, 135—**Formation** of, 80, evidence of formation, 88, notice of formation to be published, 84, notice of proposed formation, 81, provisional order for formation, 82, restrictions on formation, 85, several districts formed by one order, 127—**Isle of Wight** not to be included in, 85—**Jurisdiction** of justices when district partly in different counties, 164—**Local** government district may include part of, 118, local government district not to be included in, 85—**Metropolis** not to be included in, 86—**Name** of, to be stated in provisional order forming district, 83—**Parts** of, in different counties, to be treated as separate districts, 205—**Rural sanitary** district boundaries, when to be adopted for, 181—**South Wales** not to be included in, 85

———— **Parish**—**Combination** of townships, &c., into, 87, extension of powers for the purpose, 130—**Definition** of, 127, 221—**Excluded** part of parish in urban district may be formed into, 129—**Part** of, may be included in highway district when remainder is in a borough, 131, part of parish under local act for repair of highways, deemed to be, 130, parts of, in different poor law parishes, 130—**Separation** of parishes previously consolidated, 137

———— **Rate**—**Accounts** of, to be kept by surveyors of highways, 149, accounts to be rendered by waywardens, 153—**Allowance** of, by justices, 152—**Appeal** against, to special sessions, 157, 158—**Collector** of, may be appointed, 148, powers of collector for levying rates, 148, security to be given by collector, 148, 149—**Contribution** from, to expenses of repair of turnpike road, 258—**Definition** of, 127—**Exemption** from, evidence of exemption, 154, Highway Acts do not affect exemptions, 153—**Form** of assessment to, 153, 154—**Limitation** of, 154—**Mortgage** of, 166, form of mortgage, 169, 171, 178, 287, 292, form of transfer of mortgage, 171, 179, 288, 293, transfer of, 171—**Omission** from, a ground of appeal, 157—**Publication** of, 152—**Production** of rate book not sufficient evidence of publication, 153—**Rural sanitary** authority not to levy, 185—**Waywardens** to levy, 152

**Highways and Locomotives (Amendment) Act, 1878—Amendment of highway law, 180, of law relating to locomotives, 246**

———— Breaking up, to lay gas and water pipes, 99—Cattle found straying on, 144—Contracts by highway board for repair of, and for materials for repairs, 173—over County bridges, repair of, 269—Discontinuance of, when unnecessary, by court of summary jurisdiction, 208, appeal against discontinuance, 211, discontinued highway may be made repairable at public expense, 210, discontinuance of, by quarter sessions, 141—Encroachments on, 171—Engines not to be erected near, 239—Excluded part of parish, included in urban district for purposes of, 129—Fires not to be lighted near, 240—Gates upon, county authority may make bye-laws as to such gates, 213, urban sanitary authority may remove such gates, 214—Improvement of, 166, abolition of tolls to be deemed such improvement, 276, 278, borrowing of money for the purpose of such improvements, 166, purchase of easements or lands for improvements, 174, 175—Main roads, disturnpiked roads to be, 199, other highways may be declared to be main roads, 202, provisional order declaring disturnpiked road or highway not to be a main road, 203—Pit not to be sunk near, 239—Place in which no highways are repairable at public expense, 128, surveyor may be appointed for such place, 211—Repair of, contracts by highway board to repair, 142, contracts by other persons to repair for highway board, 143, contracts for materials for repairs, 139, default of highway authority, in repairing highway, 100, 196, dispute as to liability to repair, 102, on dissolution of highway district, highways to be repaired as under Principal Act, 117, expenses of repairs to be charged on district fund, 187, 188, highway board to repair, 99, Local Act providing for repairs in part of parish, in such case each part to be deemed separately maintaining its highways, 130, recovery of expenses of repair from persons liable *ratione tenuræ*, 111—Repairable *ratione tenuræ*, recovery of expenses of repair of, 111, such highways may be made repairable by the parish, 112—Unnecessary, discontinuance of maintenance of, 140, 208—Wind-mill not to be erected near, 239

**Horse**—Licence for, not required in certain cases, 140—Straying, on highway, 144, on turnpike road, 274

**Hours**—for Locomotives to pass through towns, 241, 250

**Hundred**—Bridges in Kent formerly repairable by, to be county bridges, 281—Main roads, when to be partly repairable by, 205

## I.

**Implements of Husbandry**—Carts, &c., conveying, exempt from toll,

115

**Impounding Cattle**—on Highway, 144—on Turnpike road, 274

**Imprisonment**—of Officer of highway board on refusal to render accounts, or deliver documents &c., 109

**Improvement of Highways**—Abolition of tolls deemed to be, 276, 278—Definition of, 170—Highway board may contribute to improvements in other districts, 171, highway board may make improvements, 166—Lands may be purchased for purpose of, 173—Parish may contribute to improvements in other districts or parishes, 170

—————of Turnpike road—by Site of toll-house being added to it 263, 272

**Incorporation**—of Acts of 1835 and 1862, 119—of Acts of 1862 and 1864, 127

—————of Highway boards, 89

**Indemnity**—to Members of highway board, 90

**Indictment**—for Non-repair of highway, county authority may direct, 198, costs of the proceedings, 198, justices at petty sessions may direct, 103, costs of the indictment, 103—for Nuisance from locomotive, 235—for Obstruction of highway, costs of, 187, when such costs are payable by highway board, 156

**Inhabitants**—Indictment of, for non-repair, when to be ordered by county authority, 198, by petty sessions, 103—Repair of private roads may be undertaken by, 114—in Vestry assembled, see *Vestry*.

**Injunction**—to restrain Breaking up highway to lay pipes, 99

**Injury**—Locomotive causing, 235, 243

**Inspection**—of Accounts of highway board by ratepayers, 157, of accounts of turnpike trust, 264

**Interest**—Personal, in contracts for repairs &c, 139

**Interpretation**—of Terms, see *Definitions*.

**Ireland**—Locomotives used on roads in, 242

- Isle of Wight**—Act of 1878 not generally applied to, 180—**Highway** district not to include, 85—**Local Act** for repair of highways in, 85—**Saving** for minerals under streets applies to, 215
- Issues**—on **Appeal** to quarter sessions, may be tried by jury, 162—**Feigned**, trial of, 163
- Items**—of **Expense** incurred by highway board, appeal against, 159

## J.

- Joint**—**Appointment** of district surveyor by two or more highway boards, 186
- Jurisdiction**—of **Justices**, in highway district partly situate in different counties, 164, limitation of their jurisdiction, 115, their jurisdiction in petty sessions, 165—of **Magistrate** acting in place of two justices, 217
- Jury**—**Questions** may be submitted to, on appeal against expenditure &c., of highway board, 162
- Justices**—**Alteration** of highway district by, 116—**Approval** by, of order of justices of another county, 136—**Borrowing** money by, for rebuilding county bridge, 280—**Costs** incurred by, in maintaining validity of order, 137—**Dissolution** of highway district by, 116—**Election** of waywardens to be regulated by, 90-92—**Ex-officio** guardians, 89, ex-officio members of highway board, 89, 147—**Extent** of powers of, 138—**Formation** of highway districts by, 82—**Indictment** for non-repair of highway, when to be ordered by, 103—**Jurisdiction** of, in highway district partly situate in different counties, 164, limitation of their jurisdiction, 115, their jurisdiction in petty sessions, 165—**Licence** may be given by, to waywardens to contract for supply of materials, 140—**Magistrate**, when to have powers of two justices, 217—**Order** of, on highway board, to repair highway, 101, order that highway repairable *ratione tenuræ* shall become repairable by the parish, 112, appeal against such order, 113—**Overseers**, how appointed by, 92—**Requisition** of, to clerk of peace to give notice of proposed highway district, 80—**Residence** of justices proposing formation of highway district, in the proposed district, 130—**Sheriffs** not to act as, 89—**Surveyors** of highways, when to be elected by, 92, 134, how, in place which does not maintain any highways, 211—**View** to be made by, of highway alleged to be out of repair 101, of highway alleged to be unnecessary, 141, 209

———— see also *County Authority, Quarter Sessions.*

## K.

**Kent**—Hundred bridges in, to be county bridges, 181

## L.

**Landowners**—Erection of fences by, 123

**Lands**—Allotments of, for repair of highways, transferred to highway board, 94—Purchase of, by highway boards, 174, 189

———Clauses Consolidation Acts—Incorporation of, with Highway Acts, 175

**Lease**—of Turnpike tolls, extension of, 277

**Levy**ing—of Highway rates by overseers and waywardens, 155

**Liabilities**—Transfer of, to highway board on their establishment, 94

**Liability**—of Member of highway board, 90, 95

**Liberties**—Inclusion of, in surrounding counties, 79

**Licence**—for Horses, &c., employed for purposes of repair of highways, not required, 140—for Locomotive, 250, for locomotive of excessive size or weight, 248—in Mortmain, highway board does not require, 89—to Waywarden, to contract for supply of materials for repair of highways, 140

**Lights**—Locomotives to be provided with, 238

**Lime**—Penalty for burning, near highway, 240

**Limitation**—of Contributions to highway rates, 154—of Speed of locomotives on roads, 238—of Time for action against highway board, 100, of time for recovery of certified sums by auditor, 192, of time for recovery of penalty for encroachment on highway, 172

**List**—of Highway boards, 106, 107

**Loans** to Highway boards—Approval of quarter sessions to, 166, form of approval, 168, general orders as to applications for approval, 168—District found to be charged with, 189—Notice of, 166, 167—Power to highway boards to raise, 166

**Local Act**—Highways in part of parish repairable under, 130, widening, diverting, and stopping up highways repairable under, 122—for Repair of highways, place subject to such Act not to be included in highway district, 86—Turnpike Act, when not included in the term, 260

**Local—continued.**

—— Government Board—Appeal to, against disallowance, &c., by auditor, 194—Appointment of person by, to certify sufficiency of bridge to carry locomotive, 231, to wind up turnpike trust, 283—Audit of turnpike accounts, when to be directed by, 265—Auditor's remuneration to be determined by, 194—Byelaws to be confirmed by, 216, 252—Divided parishes may be altered by, 111—Order of, as to time for balancing highway board accounts, 105, 106—Provisional orders of, confirmation of such orders by parliament, 216, order declaring disturnpiked road or highway not to be a main road, 203, expenses of such orders, 104—Secretary of State's powers, &c., as to highways, turnpikes, &c., transferred to, 280—Statement of accounts of highway board to be sent to, 104, form for the statement may be prescribed by, 108, statements as to turnpike trusts, to be sent to, 267, 285—Time for winding-up turnpike trust may be prolonged by, 272—Turnpike debt, when to be assessed by, 277, to be apportioned by, 279

—— Government District—Highway district not to include part of, 85, when deemed to be within highway district, 133, part of a highway district may be included in, 118—Parish partly within, for highway purposes, may be included in highway district, 128

—— Taxation Returns Act, 104

**Locking Waggon-wheels**—County authority may make byelaws as to 213—on Turnpike road, 213

**Locks**—of Gates across disputed highway, removal of, by order of highway board, 95

**Locomotive Act, 1861, 224**

**Locomotives Act, 1865, 236**—Continuance of, 236

—— Attendant to precede, on foot, 249—Bridges, when not to be crossed by, 231, damage done to bridge to be made good by owner, 232—Cylindrical wheels of, 247, meaning of the expression, 226—Definition of, 223, 256—Hours during which they may pass through towns, 241, 250—in Ireland, 242—Licence to use, in certain cases, 248, 250—Lights to be affixed to, at night, 238—Name of owner to be painted on, 234, 240—Number of persons to be employed in conducting, 237—Nuisance not to be caused by, 235, 243—Penalties in respect of use of, on roads, 238—Regulation of use of, on roads, 237, 246—Residence of owner to be painted on, 240—Saving for rights of action in respect of, 235, 243—Smoke to be consumed by, 249—Speed of, limited, 238—Steam

**Locomotives—continued.**

not to be let off from, 238—on Thames embankment, prohibited, 243—Tolls chargeable on, 225, exemption from toll in certain cases, 234, extra toll on locomotive not having cylindrical wheels, 226, repeal of tolls chargeable on, under Local Acts, 227—Turnpike Acts applied to, 234—Weight of, 228, 247, weight to be painted on the locomotive, 234—Whistles of, not to be sounded, 237—Width of, 247, width of wheels of, 246

**London Gazette**—Evidence of formation of highway district, 88—Notice of formation of highway district, to be published in, 84—Order forming highway district, to be published in, 84, publication made permissive, 135

**M.**

**Macadamised Roads**, 299

**Magistrate**—Jurisdiction of, in place of two justices, 217

**Main Roads**—Accounts of expenses of, audit, 204, copies of the accounts to be sent to county authority, 204, default in keeping such accounts, 205, mode of keeping the accounts, 204—Borough not to contribute to expenses of, 201—Disturnpiked roads to be, 199—Expenses of, to be partly paid from county rate, 199, 200, payments in respect of borrowed money not to be included, 201—Highway may be declared by county authority to be a main road, 202—Hundred may be rendered liable to part of expenses of, 205—Metropolis not to contribute to expenses of, 201—Order of county authority declaring highway to be a main road, 202, confirmation of the order, 202, copy of the order to be deposited with clerk of the peace, 202

**Maintenance**—of Disturnpiked roads, by highway board, 268—of Highways, by highway board, 99—of Turnpike roads, urban sanitary authority may undertake, 277

**Manure**—Carts, &c., conveying, exempt from toll, 115

**Materials**—for Disturnpiked road repairs, 268, 269

————— for Highway repairs—Carriage of, by ratepayers, provisions as to, not to apply to highway district, 120—Carts, &c. carrying, when exempt from toll, 115—Contracts for, by highway board, 173, by waywardens, 139

**Meaning**—of Terms, see *Definitions*.

**Meeting** of Highway board—First, default of board in holding, 117, formation of district to date from, 133, place for holding, 176, time

**Meeting of Highway board—continued.**

for holding, 133, 176, transfer of powers &c. to board thereat, 94—  
**Ordinary**, local government district when deemed within highway  
 district for purposes of, 133, names of members present at, to be  
 recorded, 177, quorum at, 177, time for holding, 176, voting at, 177

——— of Turnpike trustees—**Annual**, 285—for **Winding up** affairs  
 of the trust, 262

**Member of Highway board**—**Appearance** of board by, before justices,  
 102—**Indemnity** to, 90—**Names** of those present at meetings to be  
 recorded, 177—**Personal liability** of, 95—**Statement** of accounts to  
 be sent to, 157, time when the statement is to be sent, 195

**Metropolis**—**Act** of 1878 not generally applied to, 180—**Definition**  
 of, 223, 256—**Highway district** not to include any part of, 86

**Minerals**—under **Streets**, not vested in urban sanitary authorities,  
 214

**Minutes**—**Appointments** of officers of highway board may be made  
 by, 148—**Clerk** to highway board to keep, 98—to be **Evidence**, 90

**Mortmain**—**Highway board** does not require licence in, 89

**Mortgage**—of **Highway rates** for improvements, 166, form of mort-  
 gage, 169, 171, 178—of **Turnpike trust revenue**, extinction of un-  
 claimed debt, 273, 282, 284

**Mortgages**—**Commissioners' Clauses Act**, provisions as to, 287-293

## N.

**Name**—of **Highway board**, 89—of **Highway district**, to be stated in  
 provisional order forming district, 83—of **Owner** of locomotive to be  
 affixed thereto, 234, 240, of owner of waggon, &c., 235

**Neglect**—of **Duty**, penalty for, not to apply to highway board, 119—  
 see also *Default*.

**Newspaper**—**Formation** of highway district—to be published in, 84—  
 see also *Advertisement*.

**Non-repair**—of **Highways**, proceedings in respect of, 99, 196

**Notice**—of **Appeal** to quarter sessions, 160, 218, 253—of **Appointment**  
 of officers by highway board, 97—of **Audit**, 189—of **Bridge** being  
 insufficient to carry locomotive, 231—of **Confirmation** of provisional  
 order forming highway district, form of notice, 125—of **Dispute** as



**Notice—continued.**

to liability to repair, may be given by highway authority, 197—of **Final order for formation of highway district**, 84—of **Highway rate**, 152—of **Intention to alter order of turnpike trustees**, 277, of intention to apply for confirmation of byelaws, 216, 252—of **Loan to be raised by highway board**, 166, how such notice is to be given, 167—of **Poor rate**, 152—of **Proceedings for discontinuance of unnecessary highway**, 209, how such notice is to be given, 210—of **Proposal to form highway district**, 80, form for such notice, 125, of proposal to confirm order forming highway district, 82—of **Provisional order for formation of highway district**, 84—of **Quarter sessions**, 80—of **Sale of toll-house**, to be given to highway authority, 271, 281—of **Surcharge by district auditor**, 192—of **Time for sending in claims in respect of mortgage debt of turnpike trust**, 273

**Notices—Service of**, by highway board, 146, on highway board, 120

**Nuisance—Locomotive not to cause**, 235, 243

**Number—of Attendants to locomotives used on roads**, 237—of **Waywardens to be elected**, 91

## O.

**Objections—to Formation of highway district**, when not to be taken, 88

**Obstruction—of Highway**, costs of indictment for, 187, liability of members of board for removal of obstruction to disputed highway, 95, meaning of, 172

**Occupation Road—Parish may undertake repair of**, 114

**Offences—Summary prosecution of**, 216, 252

**Office—of Waywarden**, duration of, 198

**Officers of Highway board—Accounts to be rendered by**, 108, default in rendering accounts, 109—**Appointment of**, 96, appointment may be made by minute, 148, notice of intended appointment to be given to members, 97, one office only to be held by officer appointed, 97, quarter sessions may appoint, on default of highway board, 165—**Books, &c.**, to be delivered up, when required by the board, 109—**Composition may be paid by**, for money due to the board, 109—**Disqualification of certain persons from being**, 97—**Imprisonment of**, on refusal to render accounts or deliver up books, &c., 109—**Penalty for accepting more than one office**, 97—**Removal of**, 96—**Salaries of**, 96, salaries to be charged to district fund, 149

**Officers—continued.**

—— of Turnpike trust—Compensation to, on expiration of trust, 266, how, if road is in two counties, 270

**Offices—**of Highway board, 98

**Omission—**from Highway rate, appeal against rate on ground of, 157

**Opposition—**to Bill in parliament, costs of, 188

**Order of County authority—**Declaring highway to be a main road, 202, copy of the order to be deposited with clerk of peace, 202, confirmation of the order, 202—Declaring main road repairable by a hundred, 205—Investing rural sanitary authority with highway board powers, 183—Requiring highway board to perform duty, 197, suspension of, pending trial, 197

—— of Highway board—Appeal against, 159—for Payment of money, how executed, 177—Service of, 146

—— of Justices—for Contribution to repair of turnpike road by highway board, 258, for contribution by surveyor of highways, 258, appeal against the order, 258, highway board may repair without such order, 275—on Highway board, to repair highway, 101—that Highway repairable *ratione tenuræ* shall become repairable by the parish, 112, appeal against such order, 113—as to Unnecessary highway, 209—see also *Justices*.

—— of Local government board—as to Time for balancing highway board accounts, 105, 106

—— of Quarter sessions—as to Applications for approval of loans to be raised by highway boards, 168—Enforcement of orders of, 162—for Formation of highway district, 82, validity of the order, 135, how, if the order is partly invalid, 137, costs of maintaining validity of the order, 137

—— of Turnpike trustees—Alteration or revocation of, 276, 277

**Ordinary Highway—**Turnpike road becoming, see *Disturnpiked Road*.

**Outgoing Surveyor of highways—**Balances to be paid over by, on formation of highway board, 121—Continuance in office of, 120

**Outlying Part of parish—**Annexation of, to district, 111—when Part is in a borough, outlying part to be deemed a highway parish, 132, such part may be included in a highway district, 131

**Overseers—**Appointment of, 92—Notice of proposal to form highway district to be given to, 81, notice of provisional and final orders forming highway district, to be given to, 84—Powers of, for levy-

**Overseers—continued.**

ing highway rates, 155, for levying poor rates, 155—**Precepts** of highway board for contributions of parishes, when to be issued to, 151, 152, amount of precept to be paid from poor rate, 153, precepts of rural sanitary authority to be issued to, 186—**Recovery** of amount of precept from, 155—**Service** of notices on, 146—**Surplus** of separate rates to be paid over by, 187

**Owner**—of **Cart**, name of, to be affixed to cart, 235—of **Land**, fences may be erected by, adjoining highway, 123—of **Locomotive**, to make good damage to bridge, 232, his name to be affixed to locomotive, 234, 240, and his residence, 240

**Owners and Ratepayers**—**Excluded** part of parish in urban district may be made separate highway parish by, 129

## P.

**Parish**—**Board** for repair of highways in, not to be appointed where parish is in highway district, 119, see also *Board for repair of highways*—**Combination** of parts of, into highway parish, 87, 130—**Contributions** by, to district fund, to be proportionate to rateable value of, 149, precepts of highway board for such contributions, 151, contributions by, to improvements in other districts or parishes, 170, contributions by, to repair of turnpike road, 258—**County** in which it is deemed to be, when parts are in different counties, 87, such parts may be united in a highway district, 136—**Definitions** of, 79, 87, 88—**Divided** parishes may be altered by local government board, 111—**Excluded** part of, included in urban sanitary district for highway purposes, 129, such part may be constituted a highway parish, 129, quarter sessions may order waywarden to be elected for such part, 129—**Expenses** of highway board when chargeable separately upon, 188—**Extra-parochial** places annexed to, for highway purposes, 110, for other purposes, 132—**Lands** held in trust for, and transferred to highway board, 95—**Liability** of, to repair its highways, 87—**Local Act** providing for repair of highways in part of, 130—**Outlying** parts of, may be annexed to district, 111—**Part** of, within local government district for highway purposes, may be included in highway district, 128—**Rateable** value of, how to be ascertained, 150—**Repair** of private roads may be undertaken by, 114—**Roads** repairable by, may be adopted by council of borough, 122—**Surveyor** of highways for, see *Surveyor of Highways*.

**Parishes**—**Separation** of, after being consolidated, 137

- Parliament**—Abstract of statement of accounts to be laid before, 107—Annual statements as to turnpike trusts to be laid before, 267—Costs of opposing bill in, not payable by highway board, 156, 188—Provisional orders of local government board to be confirmed by, 216
- Part**—of Highway district, residue not affected by alteration of, 138—of Parish, see *Parish, Highway Parish*.
- Pasturage**—Saving for rights of, 145, saving for such rights on turnpike road, 274
- Partners**—Offices under the same highway board, not to be held by, 97
- Pavements**—Asphalte, 304—Stone, 302—Wood, 307
- Penalties**—Appeal against, 124—Byelaws of county authority may impose, 214—Recovery of, summarily, 124, 216, 252—on Surveyor for neglect of duty, not to apply to highway board, 119
- Penalty** in respect of—Acceptance of more than one office under highway board, 97—Annual return as to local rates, 105—Cattle straying on highway, 145, straying on turnpike road, 274—Contracts for repairs, by waywardens personally interested, 139—Encroachments on highway, 171, limitation of time for recovery of the penalty, 172—Engine, wind-mill, &c., erected near highway, 239—False declaration made to auditor, 193—Lime kilns, &c., burnt near highways, 240—Locomotive, constructed or used so as not to consume its own smoke, 249, locomotive driven at excessive speed, 239, name and residence of owner and weight not affixed on locomotive, 235, 240, locomotives used on road, 238, 248—Obstruction of auditor, 193—Riding on cart on turnpike road, when not to be inflicted on driver, 264—Statement of accounts of highway board to be sent to local government board, 106, 107
- Personal**—Interest of waywardens in contracts for repairs, &c., 139—Liability of members of highway board, 95, saving for, 90
- Petty**—Sessional division, definition of, 223—Sessions, jurisdiction of justices in, 165
- Pit**—near Highway, not to be sunk unless fenced in, 239, 240
- Place**—Separately maintaining its own highways, meaning of the expression, 128, see *Highway Parish*.
- Ploughing Engines**—Restrictions on use of, near highways, 240
- Police Magistrate**—Jurisdiction of, in place of two justices, 217

- Poll**—of Inhabitants, demand for, 93
- Poor Law**—Accounts, audit of, 190—Parish, definition of, 127
- Rate—Appeal against, to special sessions, 158—General expenses of rural authority to be paid from, 186—Precepts of highway board when to be satisfied out of, 153—Publication of, 152—Statutes relating to assessment and levying of, 155
- Post**—Service of notices, &c., by, 146
- Powers**—of Highway board, transfer of, to rural authority, 184, 185—of Overseers, for levying highway rates, 155—of Surveyors of highways, transfer of, to highway board, 94—of Waywardens, for levying highway rates, 155
- Precepts of Highway board**—Charges on highway rate applied to sums paid under, 155—Execution of, 177—Issued to overseers or waywardens, 151, 152—Payment of amounts of, by overseers, 153, by waywardens, 152—Service of, 146
- of Rural sanitary authority—Highway Acts, not to apply to making of, 185—Public Health Act, to apply to, 186
- Principal Act**—Application of, to Act of 1862, 118—Meaning of, in Highway Acts, 79
- Private Roads**—Repair of, may be undertaken by parish, 114
- Proceedings of Highway boards**—Defect in election or qualification of member not to invalidate, 90—Evidence of, 90—Rules as to, 91, 146—Schedule of rules as to, 176—Vacancies not to invalidate, 89
- Production**—of Rate book, not sufficient evidence of publication of highway rate, 153
- Proof**—see *Evidence*.
- Property**—of Highway board, transfer of, to rural authority, 184—of Surveyors of highways, transfer of, to highway board, 94
- Proposal to form Highway district**—Form of notice of, 125—Justices making the proposal to be resident in the district, 130—Notice of the proposal, 80
- Prosecution of Offences**—Summarily, 216, 252
- Protection**—of Members of highway board from trial or prosecution, 90
- Provisional Order of Justices**—for Alteration of highway district, 116—Approving of order of justices of another county, 136—

**Provisional Order of Justices—continued.**

Definition of, 138—for Dissolution of highway district, 116—for Formation of highway district, 82, alteration of such orders, 83, combination of townships, &c., into one highway parish by the order, 87, confirmation of the order, 82, copy of the order receivable in evidence, 135, election of waywardens to be provided for by the order where no surveyor or waywardens previously elected, 131, particulars to be mentioned in the order, 83, several districts formed by one order, 127, time for first meeting of highway board to be specified in the order, 133

---

— of Local Government board—Confirmation of, by parliament, 216—Declaring disturnpiked road or highway not to be a main road, 203—Expenses of such orders, 204

**Publication**—of Highway rates, 152, production of rate book, not sufficient evidence of the publication, 153—of Notice of formation of highway district, 84, of notice of intention to apply for confirmation of byelaws, 216, 252, of notice of proceedings for discontinuance of unnecessary highway, 210—of Poor rates, 152

**Purchase**—of Easements, by highway boards, 175—of Lands, by highway boards, 174, 175

## Q.

**Qualification**—of Ex-officio waywardens, 147—of Member of highway board, defect in, not to invalidate proceedings, 90—of Surveyor of highways, 92, 134—of Waywardens, 91

**Quarter Sessions**—Adjournment of appeal by, 219, 254—Appeals to, 218, 253, appeal against expenditure by highway board, 159, against order for contribution to repair of turnpike road, 258, against order of highway board, 159, against order rendering highway repairable by the parish, 113, against penalty imposed, 124, against precept for contribution to district fund, 160, against requisition to throw site of toll-house into road, 272—Appointment of officers by, on default of highway board, 165—Approval of, to borrowing of money by highway board, 166, form of approval, 168, general orders as to applications for such approval, 168—Borough having separate sessions, not to be deemed an urban sanitary district, 222—Costs of appeal to, 163, 220—Definition of, 223, 256—Discontinued highway may be made repairable at public expense by order of, 210—Enforcement of orders of, 162—General orders of, as to applications for approval to loans, 168—Indictment

**Quarter Sessions—continued.**

at, may be ordered by justices where obligation to repair highway is disputed, 103—Notice of, 80, notice of appeal to, 160, 218, 253—Orders of, for formation of highway districts, 82, for holding first meeting of highway board, 117—Powers of sessions on appeal to, 163—Reference of appeal to, to arbitration, 161—Special case may be stated on appeal to, 219—Time for holding, in counties, 80, 81—Waywardens for excluded part of parish in urban district may be ordered to be elected by, 129

——— see also *County Authority, Justices.*

**Queen's Bench—**Auditor's disallowances, &c., may be removed to, by certiorari, 193—Order on highway board to hold first meeting may be removed into, 117, order of quarter sessions may be enforced by, 162

**Quo Warranto—**for Office of waywarden, 93

**Quorum—**of Highway board, 177

## R.

**Railway** *Clauses Consolidation Act*—Application of, to disturnpiked roads, 274

**Rate—**for Repair of highways, see *Highway Rate.*

**Rateable Value—**Appeal from determination of, in certain cases, 151—Ascertainment of, 150—Contributions to district fund to be proportionate to, 149

**Ratepayers—**Accounts of highway board to be open to inspection of, 157, accounts of turnpike trust, when to be open to inspection of, 264—Appeal by, against expenditure or order of highway board, 159—Carriage of materials by, provisions of Highway Act 1835, as to, not to appeal to highway district, 120

**Ratione tenuræ** *Highways*—Parish may adopt, 112—Recovery of expenses of repair of, 111

**Re-appointment—**of Waywardens, 94

**Rebuilding—**of County bridge, money may be borrowed for, 280

**Receiver—**Appointment of, by mortgagees of rates, 171

**Recognizance—**on Appeal to quarter sessions, 219

**Recovery**—of Amount of precept, from overseers or waywardens, 155, under Public Health Act, 187—of Certified sums, by auditor, 190, limitation of time for recovering such sums, 192—of Contributions from highway board, to repair of turnpike road, 142—of Expenses caused by extraordinary traffic, 208, of expenses and fines, summary proceedings for, 216, 252, of expenses of repair of highways repairable *ratione tenuræ*, 111—of Penalties, 124

**Reference to Arbitration**—on Appeal against expenditure of highway board, 161

**Regulations**—as to Election of waywardens, 91—as to Formation of highway districts, 82—as to Proceedings, highway boards may make, 176, rules in schedule to be observed, 91

**Remission**—of Disallowances, by local government board, 195

**Removal**—of Officers, by highway board, 96

**Remuneration**—of Auditor, for audit of highway accounts, 194

**Repair**—of Approaches to county bridges, 269—of Bridges on dis-  
turnpiked roads, 269, of roads over county bridges, 269—of Dis-  
turnpiked roads, materials for, 268, 269—of Highways, contracts  
for, by highway board, 139, 173, contracts for materials, 173, over  
county bridges, 269, default of highway authority with respect to  
repairs, 196, dispute as to liability to repair, 102, duty of highway  
board with respect to repairs, 99, expenses of repairs to be charged  
on district fund, 187, 188, expenses may be charged separately on  
parts of district in certain cases, 188, proceedings where road is out  
of repair, 100, *ratione tenuræ* highways, expenses of repairs, how to  
be recovered, 111, such highways may be made repairable by the  
parish, 112—of Private roads, parish may undertake, 114—of  
Roads, mode of executing, 297

**Repayment**—of Main road expenses, from county rate, 200, from  
hundred rate, 205, 206

**Residence**—of Ex-officio members of highway board in the district, 89  
—of Justices proposing formation of highway district, in the pro-  
posed district, 130—of Owner of locomotive, to be painted on the  
locomotive, 240

**Restrictions**—on Formation of highway districts, 85

**Returns**—as to Local rates, to be made to local government board, 104

**Revocation**—of Orders of turnpike trustees, 276, 277

**Right**—of Pasturage, saving for, 145



- River**—Bed of, annexed to adjoining parish, 132
- Roads**—Construction and repair of, 197—Laid out, parish may undertake repair of, 114—Repairable by parish, may be adopted by council of borough, 122—see also *Highways*.
- Rollers**—for Construction and Repair of roads, 301
- Rubbish**—Penalty for placing, on highway, 171
- Rules**—see *Regulations*.
- Rural Sanitary authority**—Definition of, 221, 222—Expenses of, under Highway Acts, 185, under Public Health Act, 185—General expenses of, 185, 186—Highway board powers may be given to, 182, 185—Highway rates not to be levied by, 185—Precepts under Highway Acts not to be made by, 185, when to be issued to overseers or waywardens, 186—Property transferred to, to be held on trust for parishes, 185—Recovery of contributions by, 187—Special expenses of, 185
- Sanitary district—Contributory places in, 186—Definition of, 221, 222—Highway districts, when to be made coincident with, 181, how if rural district is subsequently altered, 185

## S.

- Saint Albans**—a County for purposes of Highway Acts, 79
- Salaries**—of Officers of highway board, 96—Parish surveyor with salary, not to be appointed in highway district, 119
- Sale**—of Exhausted waste lands by highway board, 94—of Toll-houses, 262, 263, notice of sale to be given to highway authority, 271, 281
- Saving**—for Drivers riding on carts on turnpike road, 264—for Liability of members of highway board, 90—for Rights of pasturage on highway, 145, on turnpike roads, 274—for Turnpike trustees being shareholders in company supplying gas or water, 263
- Sea**—Accretions from, annexed to adjoining parishes, 132—Shore of, annexed to adjoining parish, 132
- Seal**—of Highway board, 89
- Secretary of State**—Local government board to have powers, &c., of as to highways, &c., 280
- Security**—Collectors of highway rates to give, 148, 149—Stamp duty on, 96—Treasurer of highway board to give, 97

- Separate Rate**—for Contribution of parish to district fund, 152—for General expenses of rural sanitary authority, 187, collection of such rate, 187, surplus of such rate be paid over by overseers, 187
- Separation**—of Parishes previously consolidated, 137
- Service**—of Notices, &c., issued by highway board, 146, Proof of such service, 146—of Notices, &c., on highway board, 120—of Writ, on highway board, 120
- Shafts**—Drivers of carts, not to ride upon, 264
- Share**—in Company supplying gas or water not to disqualify turnpike trustees, 263, 264
- Sheep**—Straying on highway, 144, on turnpike road, 274
- Sheriff**—Prohibition from acting as justice, 89
- Shoes**—on Wheels of locomotives, 247
- Sides**—of Highway, meaning of, 145
- Site**—of Toll-houses, when to be sold, 262—Notice of sale to be given to highway authority, 271, 281, when to be thrown into road, 263, 272
- Smoke**—Locomotives to consume, 249
- Soil**—Penalty for removing, from highway, 172—of Street, vesting of, in urban sanitary authority, 215
- South Wales**—Act of 1878 not generally applied to, 181—Highway district not to be formed in, 85—Saving for minerals under streets applies to, 215
- Special**—Case, on appeal to quarter sessions, by consent, 219—Expenses, of rural sanitary authorities, 185—Sessions, appeal to, against highway rate, 158, against poor rate, 148, justices may act at petty sessions instead of special sessions, 165
- Speed**—of Locomotives on roads, limitation of, 238
- Stamp Duty**—on Agreements for repair of highways, 140—on Appointment to office, abolished, 96—on Security to be given by treasurer, 96
- Statement**—of Highway board accounts, to be sent to local government board, 104, and abstract laid before parliament, 107, form of statement, 108, when statement is to be sent to members, 157, 195—of Turnpike trust accounts, 267

**Steam**—Locomotive on road not to let off, 238—**Rollers**, for roads, 301

**Stipendiary Magistrate**—Jurisdiction of, in place of two justices, 217

**Stone**—Pavements, 302, cost and duration of, 306, 307—for **Repair** of disturnpiked road, how to be obtained, 268, 269

**Stopping-up**—of **Highway**, 141, of highway repairable under Local Act, 122

**Stray**—Cattle, 144, meaning of straying, 145, on turnpike road, penalty in respect of, 274

**Streets**—Minerals under, not vested in urban sanitary authority, 214—**Vesting** of, in urban sanitary authorities, 214.

**Summary Jurisdiction Acts**—Definition of, 216—**Proceedings** for discontinuance of unnecessary highway, 209, for recovery of expenses and fines, 216, for prosecution of offences, 216, for recovery of penalties, 124—see also *Justices*.

**Summons**—Service of, on highway board, 120, service of, when issued by highway board, 146

**Supply**—of **Materials** for repairs, contracts by waywardens for, 139

**Surcharges**—**Appeal** against, to local government board, 194—**District auditor**, when to make, 190—**Notice** of, 192—**Remission** of, by local government board, 195—**Removal** of, by certiorari, 193

**Surplus**—of **Separate rate** for general expenses of rural authority, to be paid over by overseers, 187—**Waywardens** to pay over, on expiration of term of office, 153

**Surveyor of County authority**—see *County Surveyor*.

———— of **Highway board**—**Appointment** of, 96—**Assistant** may be appointed, 96—**Duties** of, 98—**Exemption** of, from turnpike tolls, 114—see also *District Surveyor*.

———— of **Parish highways**—**Accounts** to be kept by, 149—**Appointment** of, by justices, 92, 134, by vestry, 91, 92, appointment for place not maintaining any highways, 211—**Collectors** of highway rates may be appointed by, 148—**Continuance** in office of, on formation of highway district, 133—**Contracts** by, 139—**Contribution** by, to repair of turnpike road, 258—**Discontinuance** of office of, on formation of highway district, 120, discontinuance of, where rural authority has become highway board, 184—

**Surveyor of Parish highways—continued.**

Highway board are successors in office of, 122—Outgoing, balances to be paid over by, 121, continuance in office of outgoing surveyor, on formation of highway district, 120—Powers of, for levying rates, 148—Qualification of, 92, 134—with Salary, not to be appointed in highway district, 119—Transfer of powers, duties, and property of, to highway board, 94, 95, transfer of powers, &c., to rural authority, in certain cases, 184

**Suspension Bridge**—Locomotive when not allowed to cross over, 231

## T.

**Tables**—of Cost of construction and repair of roads and pavements, 306

**Thames Embankment**—Locomotives not to be used on, 243

**Time**—for Certiorari to be applied for, 93—for First meeting of highway board, 133—for Waywardens to be elected, to be settled by justices, 91

**Tires**—of Locomotive wheels, width of, 246—of Waggon wheels, county authority may make byelaws as to, 213

**Toll-houses**—Sale of, 262, notice of sale to be given to highway authority, 271, 281—Site of, when to be thrown into road, 263

**Tolls**—on Bridges, to be charged in respect of locomotives, 225—on Turnpike roads, exemption from, of carts, &c., carrying agricultural implements or produce, or manure, 115, of district surveyor, 114—see also *Turnpike Tolls*.

**Town**—Council, consent of, to inclusion of part of borough in highway district, 86—Locomotives to pass through, during hours to be fixed by local authority, 241—Meaning of, 86

**Townships**—Combination of, into one highway parish, 87, extension of powers as to such combination, 130

**Traffic**—Extraordinary, composition for expenses caused by, 208, recovery of expenses caused by, 208

**Transfer**—of Highway board powers, &c., to rural authority, 184—of Mortgage, form of, 171, 179—of Parish surveyor's powers, &c., to highway board on their establishment, 94—of Secretary of State's powers, &c., as to highways, &c., to local government board, 280

**Treasurer**—Appointment of, by highway board, 96, by quarter sessions on default of highway board, 165—Duties of, 98—Security to be given by, 97

**Trespass**—Liability of members of highway boards for, 95

**Trial**—of Appeal to quarter sessions, by jury, 162—of Feigned issues, 163

**Trust**—for Parishes, lands subject to, and transferred to highway board, to remain subject to trust, 95—Property transferred to rural sanitary authority to be held upon, 185—Turnpike, see *Turnpike Trust*.

**Turnpike Acts**—Application of, to locomotives, 234—Continuance of, 284—List of, 257—Local Act does not include, 260—Transfer of powers of Secretary of State under, to local government board, 280

————— Continuance Acts—General provisions of, 257–285

————— Road—Cattle straying on, 274—Centre of, defined, 261—Contract by highway board to repair, 142—Contributions to repair of, by highway board, 142, 258, 270, by parish surveyor of highways, 258—Disturnpiked road to be main road, 199, except in certain cases, 203, provisions as to cases where no money is to be expended on such road, 279, see also *Disturnpiked Road*—Driver of cart on, when not liable to penalty for riding on cart, 264—Encroachments on, 260—Improvement of, by addition of site of toll-house, 263—Locking of waggon wheels upon, prohibited, 213—Parts of, in different counties to be treated as separate turnpike roads, 204—Repair of, by highway board, 275, under agreement to discharge debt of the trust, 275, 276—Urban sanitary authority may undertake maintenance of, 277

————— Tolls—Abolition of, to be deemed an improvement of highways, 276, 278, money may be borrowed for the purpose, 278—Exemption of district surveyor from, 114, exemption of waggons drawn by locomotives from, 234—Lease of, may be extended, 277—on Locomotives, 225, on locomotives not having cylindrical wheels, 226, tolls chargeable under Local Acts, repealed, 227, waggons drawn by locomotives when exempt from toll, 234—in Sanitary districts, when not to be taken, 282

————— Trust—Accounts of, when to be open to inspection of rate-payers, 264—Annual statements as to, 267, 285—Audit of accounts of, 265—Debts of, may be assessed by local government board, 277,

**Turnpike Trust—continued.**

unclaimed debts, extinguished, 273, 282—on Expiration of balances may be paid over to parishes, 264, balances paid over to be carried to district fund, 271, compensation to officers of expired trust, 266, 270, distribution of funds amongst creditors, 283, extinction of unclaimed debts, 273, 282, 284, local government board may appoint person to wind up trust, 283, local government board may extend time for holding meetings, 272, meetings to be held, 262, officers may be compensated in certain cases, 266, 270—Union of trusts, 265

——— Trustees—Alteration of orders, &c., of, 276, 277—Annual meeting of, 285—Meetings to be held by, to wind up expiring trust, 262—Shares in certain gas or water companies not to disqualify, 263, 264

**U.**

**Unclaimed**—Debt of turnpike trust, extinction of, 273, 282, 284

**Union**—Definition of, 222—of Parishes in different counties, in one highway district, 135—of Turnpike trusts, 265, 266

**Unnecessary Highways**—Appeal against discontinuance of, 211—Discontinuance of, 140, 208

**Urban Sanitary authority**—Contracts by, to undertake maintenance of roads, &c., 143, 277—Definition of, 221, 222—Gates on highways may be removed by, 213, 214—Minerals under streets not vested in, 214—Streets vested in, 214

——— Sanitary district—Definition of, 221, 222—Excluded part of parish included in, for highway purposes, 129

**Useless Toll-houses**—Disposal of, 262, 263

**V.**

**Vacancy**—Casual, on highway board, 177—Proceedings of highway board not to be invalidated by, 89

**Validity**—of Order forming highway district, 135, how if order partly invalid, 137, expenses of maintaining validity of order, 137—of Proceedings of highway board, defect in election on qualification not to affect, 90, vacancy not to affect, 90

**Valuation**—Appeal against highway rate on ground of incorrectness in, 157—List, rateable value of parish to be ascertained from, 150

- Vesting**—of Streets in urban sanitary authorities, 214, saving for minerals under the streets, 214
- Vestry**—Consent of, to inclusion of part of borough in highway district, 86—Repair of private roads may be thrown on the parish at the request of, 114—Surveyors of highways to be elected by, 91, 92, for place not maintaining any highways, 211, poll to be taken if demanded, 93—Waywardens to be elected by, 91
- Vice-Chairman**—of Highway board, 177
- View**—of Highway alleged to be out of repair, by justices, 101, of highway alleged to be unnecessary, 141, 209
- Voting**—at Meetings of highway board, 177—by Waywardens, 139

## W.

- Waggons**—Byelaws of county authority, as to locking wheels of, 213, as to tires of wheels, 213, as to width of wheels, 213—Exemption of, from turnpike tolls, in certain cases, 115—Name of owner to be painted on, 235—Weights allowed to, by Turnpike Acts, 228
- Water-pipes**—Injunction to restrain breaking up highway to lay, 99
- Waywardens**—Accounts to be rendered to highway board by, 153—Alteration of number of, 137—Appeal to quarter sessions by, against expenditure or order of highway board, 159—Certificate of appointment of, 138—Choice of district by, when qualified to sit for more than one district, 148—Collectors of rates may be appointed by, 148—Continuance in office of, 94—Contracts by, 139—Discontinuance of, where rural authority has become highway board, 184—Duration of office of, 198—Election of, 91, first election on day appointed by justices, 134, by whom they are to be elected, 93, how, where no surveyors or waywardens have previously been elected, 131—Estimate of expenses to be given to, 100—Excluded part of urban district, when to have waywardens, 129—Highway board consists of, with justices, 89—Justices may summons, where highway out of repair, 100—Number of, 91, alteration of number, 137, number to be stated in provisional order forming district, 83—Obligation to repair highway disputed by, 103—Precepts for contributions of parishes, when to be issued to, 151, 152, recovery of amount of precept from, 155—Qualification of, 91, qualification of ex-officio waywardens, 147—Quo warranto lies for office of, 193—Rates to be levied by, 152, powers for levying rates, 155—

**Waywardens—continued.**

Re-eligibility of, 94—Service of notice on, 146—Surplus to be paid over by, on expiration of term of office, 153—Voting by, 139

**Weight—of Locomotives, 228, 247, weight to be affixed to locomotive, 234**

**Wheels—Cylindrical, meaning of the term, 226, locomotive not having such wheels to be charged extra toll, 226—Locking of, on turnpike road, prohibited, 213—of Locomotives, weight allowed on, 228, width of locomotive wheels, 246—of Waggon, byelaws of county authority as to, 213**

**Whistle—of Locomotive not to be sounded, 237**

**Widening—Highways repairable under Local Acts, 122—Road, to be deemed an improvement, 170**

**Width—of Locomotive wheels, 246—of Locomotives, 247—of Waggon wheels, county authority may make byelaws as to, 213**

**Wilful—Obstruction of highway, meaning of, 172**

**Winding-up Turnpike trusts—Appointment of person to conduct, by local government board, 283—Meetings for purposes of, 262—Time for, may be prolonged by local government board, 272**

**Wind-mill—Erection of near highway, prohibited, 239**

**Wood—Pavements, 303, cost of such pavements, 308**

**Writ—Service of, on highway board, 120**

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# Index to Subjects.

	PAGE		PAGE
Artizans' Dwellings .....	12	Official Publications— <i>continued.</i>	
Assessment .....	24	Friendly Societies .....	29
"    Metropolis .....	17	Land Registry .....	29
(See also Rating)		Local Government Board .....	28
Ballot Act .....	18, 21	Probate .....	30
Bankruptcy .....	16	Rules and Orders—Law	
Boarding-out .....	17	Courts .....	29-31
Book-keeping for Public		Shipping .....	29, 31
Institutions .....	16	Orders of Local Govern-	
Burial .....	24	ment .....	6
Bye-Laws .....	6, 7	Overseers .....	6
Canal Boats .....	16	Parochial Cash Book .....	13
Cattle Diseases .....	19	Paupers .....	22
Chairman's Handbook .....	8	"    Education .....	19
Churchwardens .....	15	Poor Law Accounts .....	19, 22
Clergy .....	13	"    Amendment Act .....	19, 24
Criminal Code .....	20	"    of Elberfield .....	24
Diary .....	26	"    in Belgium .....	24
Directory .....	27.	"    Conferences .....	21
Education Law .....	9, 12	"    Orders .....	6
Elections — Parliamentary		Poor Removal .....	21
and Municipal .....	18, 21	Prisons .....	5
"    School Board .....	17	Public Health .....	5, 10
"    Guardians .....	18	Rating .....	15, 22
"    Local Boards .....	17	"    of Machinery .....	13
Explosives .....	20	(See also Assessment)	
Highways .....	6	Registration of Voters .....	11
Infectious Diseases .....	23	"    Births and Deaths .....	20
Inspector of Nuisances .....	18	Relief .....	17
Licensing .....	10	Rivers Pollution .....	17
Local Government .....	5	Sanitary Law .....	6
"    Directory .....	27	"    Hints .....	12
"    Orders .....	6	"    Accounts .....	19
"    Reports .....	28	School Board Law .....	9, 12
Lunacy .....	14	"    Accounts .....	20
Master and Matron of Work-		Sewage .....	10, 29
house .....	22	Tables :—	
Medical Officers of Health .....	18	Acreage, &c. ....	25
"    Poor Law .....	22	Dates .....	26
Mortgage Registers .....	21	Loans .....	26
Nuisances .....	12, 18	Provisions .....	25
Official Publications :—		Rates and Taxes .....	25
Bankruptcy .....	29	Tenements .....	26
Cab Fares .....	31	Thames Valley Sewerage... ..	10
County Courts .....	29	Town Clerk .....	18
Divorce .....	30	Trade Marks .....	7, 32
Education Department ...	29	Vaccination .....	11, 24
		Weights and Measures ...	6, 10
		Workhouses .....	16

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Amended Rules and Orders for the District Registrars in Non-Contentious Business (1871) ...	...	0	1
Table of Fees to be taken in the Principal Registry of the Court of Probate, and in the District Registries thereof (1874)...	...	1	0
Tables of Fees to be taken by Proctors, &c., practising in the Principal and District Registries of the Court of Probate in Non-Contentious Business (1874) ...	...	0	6
Probate Parchment Forms ...	} ... <i>Now Supplied by Inland Revenue.</i>		
Double Probate ditto ...			
Administration ditto ...			
Administration de bonis non Forms ...			
Ditto with Will annexed Forms ...			
Court of Probate, Debtors' Act, 1869, Rules for Regulating the practice under, and carrying into effect the first part of the said Act ...	...	0	2

**Chancery :**

Chancery Fund Rules, Chancery Fund Orders, and Chancery Funds (Lunacy) Orders, 1872 ...	...	0	6
Chancery Funds Consolidated Order...	...	0	3

**Divorce :**

Rules and Regulations for Her Majesty's Court of Divorce, &c.	...	1	0
Additional Rules and Regulations for ditto ...	...	0	2
Table of Fees to be taken in ditto ...	...	0	3
Debtors' Act, 1869, Rules for regulating the Practice under, and carrying into effect the first part of the said Act ...	...	0	2
Amended and Additional Rules, 1875 ...	...	0	2
Additional Rules and Regulations, 1877 ...	...	0	2



***Employers and Workmen Act, 1875 :***

Rules for Court of Summary Jurisdiction ...	...	s.	d.
Forms under same, see separate List.		0	2

***Supreme Court :***

Rules of (Costs), being the additional Rules made by Order in Council of 12th August, 1875 ...	...	...	0	6
Ditto, December, 1875, and February, 1876 ...	each	0	2	
Order as to Fees and Percentages, 22nd April, 1876 ...	...	0	3	
Rules of—June, 1876 ...	each	0	2	
December, 1876; May, 1877; June, 1877 ...	„	0	1	
Lord Chancellor's Order, 19th June, 1877 ...	...	0	1	

***Trade Marks :***

Up to August 7, 144 Nos.

Index—namely, May to December, 1876; January to June, 1877; June to December, 1877...	each	3	0
Trade Marks Journal, published in parts 1 to 134 already published) ..	each	1	0
Trade Marks Registration Act, 1875, Rules under	...	1	0
Forms under ditto, A, B, C, D ...	per doz.	0	6

***Cruelty to Animals Act, Forms under—viz. :***

Application for License ...	...	0	0½
Certificates A to F ...	each	0	0½

***Merchant Shipping Acts, 1854 to 1876 :***

General Rules for formal Investigations into Shipping Casualties, 1876 ...	...	0	1
General Rules for Courts of Survey in the United Kingdom, 1876 ...	...	0	3

***Hackney Carriages and Metropolitan Stage Carriages :***

Abstract of Laws in force in Metropolitan District (1871 Ed.)	...	0	2
Distances (1874 Ed.) ...	...	1	0

269. Amount above balance  
 Sec 43. 2728 Victim's  
 Appeal has to be defrayed  
 liability of member — 9-2526 he

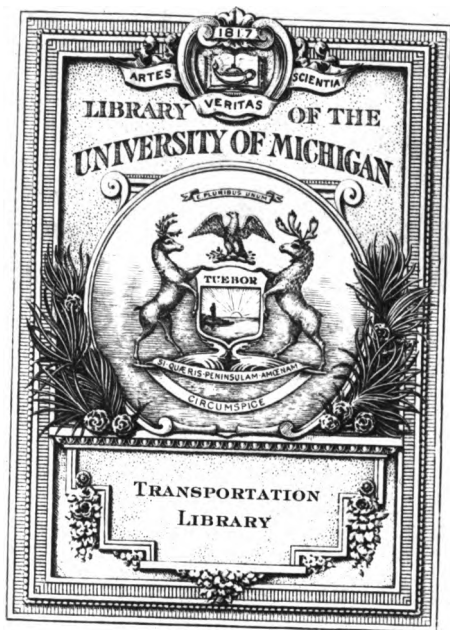


P. 114 No. 100

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## THE ROADS OF ENGLAND AND THEIR COST.

THROUGHOUT the whole of England there is about one mile of high road to every 361 acres of land. Of the 103,000 miles thus laid out, rather more than one-seventh are "main-roads," and the rest ordinary highways; one mile of the former being included in every 2700 acres, and one of the latter in every 420 acres. Here and there this average proportion of roads to acreage is very much exceeded; and this is more especially noticeable in the west country where they are better off for main roads, and, generally speaking, for all sorts of roads, than elsewhere. Gloucester is indeed the only county which has more than one mile of main road for every 1000 acres. But Worcester is very nearly as well provided; and both Wilts, Somerset, Hereford, and Shropshire have a mile in each 1300 acres. Very different is the case of some of the outlying counties, especially in the north. Thus, in Westmoreland the proportion of acreage to a single mile of mainroad is 3800, in Lincolnshire 4000, in Northumberland 4200, and in Yorkshire and Lancashire very nearly 5000. In these figures only those roads are considered which are managed by district boards; but if the table were made to include also those managed by unions, the result would not be altered materially. Suffolk exhibits the greatest poverty in main roads; but then it is well provided with less-important highways, of which it has about a mile in every 280 acres. The same proportion appears in Worcestershire, which is ahead of any other county in this respect. On the other hand, Lancashire and Yorkshire, which contain very few main roads, are also scantily provided with other highways, and Huntingdon still worse so, as there is only one mile of ordinary road in it for every 600 acres. It appears, therefore, that a driving road would be made out with the greatest facility in Worcestershire and under the greatest